

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AURANGABAD

CRIMINAL WRIT PETITION NO. 1562 OF 2014

Ravindra s/o Tryambak Bedse,
age 42 years, occ. Business,
r/o Rajiv Gandhi Nagar, Behind
Gurukul High School, Near Yashwant
Nagar, Sakri Road, Dhule

...Petitioner

VERSUS

- 1] The State of Maharashtra,
- 2] Walchand s/o Hiralal Shah,
age 70 years, occ. Business,
r/o 69-A, G.P.Housing Society,
Deopur, Dhule

...Respondents

.....
Shri V.B.Anjanwatikar, advocate for petitioner
Shri D.R.Kale, A.P.P. for respondent no.1
Shri P.S.Kosti, advocate for respondent no.2
.....

CORAM : V.M.DESHPANDE, J.

DATED : 10th March, 2015

ORAL JUDGMENT :-

- 1] Rule. Rule is made returnable forthwith. With the consent of the learned counsel for the parties heard finally.

2] I have heard Shri V.B.Anjanwatikar, learned counsel for the petitioner, Shri D.R.Kale, learned Additional Public Prosecutor for respondent no.1 and Shri P.S.Kosti, learned counsel for respondent no.2.

3] Respondent no.2 is the original complainant. He filed proceedings before the learned Judicial Magistrate, First Class, Dhule against the present petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act, since the negotiable instrument given on behalf of the present petitioner for Rs.6,756/- was not honoured by his banker. The said proceedings were registered as Criminal Case No. 2987 of 2008. The learned Magistrate on 17.7.2010 passed an order of conviction, by which the present petitioner was convicted for the said offence and was sentenced to suffer simple imprisonment for one month and also directed to pay amount of Rs.7,000/- by way of compensation and if the said compensation is not paid he was directed to further suffer simple imprisonment for 15 days.

4] The present petitioner, being dissatisfied by the said order, filed an appeal before the Sessions Judge at Dhule, however, the said appeal was barred by limitation, and therefore, an application bearing Criminal Miscellaneous Application No. 2 of 2011 was filed for condonation of delay.

The learned Additional Sessions Judge, Dhule on 13.11.2014 was pleased to reject the said application for condonation of delay and thereby refused to register the Criminal Appeal. Being dissatisfied by the said order, dated 13.11.2014, the present Writ Petition is filed.

5] Before this court in the Writ Petition it was pointed out by the petitioner that after the conviction and before the decision on the application for condonation of delay, both the petitioner as well as respondent no.2/original complainant settled their dispute amicably out of court and respondent no.2 received Rs.7,000/- from the present petitioner. It is pointed out that since the compromise took place amongst them, the petitioner was labouring under the impression that he is not expected to take any steps in the appeal, which he has filed along with the application for condonation of delay. The order impugned clearly shows that the present petitioner did not take necessary steps for service of the application for condonation of delay on the present respondent no.2 and that caused in rejecting the application for condonation of delay.

6] Before this court, respondent no.2 appeared suo motu and submitted before this court that respondent no.2 has already compromise the matter with the petitioner and he has also received the entire amount. In that view of the matter, this

court on 9.2.2015 was pleased to direct the petitioner as well as respondent no.2 to file the joint affidavit to that effect.

7] The matter was then listed on 16.2.2015. On that day, it was pointed out to this court by the learned counsel for respondent no.2/original complainant that due to the accident respondent no.2 was unable to attend this court and if permission is granted, affidavit of compromise can be verified before the Additional Sessions Judge, Dhule. In view of the fact that respondent no.2 was in difficulty to attend the court due to his accident and his hospitalization this court directed the Additional Sessions Judge to record and verify the compromise. Accordingly, the learned Additional Sessions Judge, Dhule appointed the Court Commissioner Shri Tushar A.Pawar, advocate to verify and record the compromise.

8] Accordingly, the Court Commissioner along with the learned counsel for the petitioner as well as respondent no.2/original complainant and after the satisfaction about the health and the mental consciousness of respondent no.2, he has verified the compromise.

9] Accordingly, the learned Additional Sessions Judge, Dhule has submitted the report, dated 9th/10th March, 2015 to this court along with the Court Commissioner's report, joint

affidavit of the petitioner as well as respondent no.2 and the certificate. The report of the learned Additional Sessions Judge along with the joint affidavit of the petitioner as well as respondent no.2 and the Court Commissioner's report is taken on record and collectively it is marked 'X' for identification purposes.

10] The offence under Section 138 of the Negotiable Instruments Act is compoundable offence. Further in the present case, the parties have settled their dispute amicably out of court. The joint affidavit is duly verified by the Court Commissioner. Respondent no.2 has specifically admitted in his affidavit that he has received the amount of Rs.7,000/- from the petitioner by way of full and final settlement. In that view of the matter, the present Writ Petition needs to be allowed.

11] Remanding the matter to the Additional Sessions Judge by setting aside the order of the Additional Sessions Judge in Criminal Miscellaneous Application No. 2 of 2011 then directing the Additional Sessions Judge to register the Criminal Appeal and decide the same, will be a futile exercise and it will be waste of judicial time. Since the parties have already settled the dispute and the affidavit is duly verified by the Court Commissioner, to sub serve the ends of justice, the extraordinary writ jurisdiction of this court can be exercised and

accordingly, the judgment and order of conviction, passed by the Judicial Magistrate, First Class, Dhule, dated 17.7.2010 in Criminal Case No. 2987 of 2008 convicting the applicant for the offence punishable under Section 138 of the Negotiable Instruments Act and directing him to suffer simple imprisonment for one month, is quashed and set aside. Criminal Writ Petition is allowed.

[V.M.DESHPANDE, J.]

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