

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL MISC. APPLICATION NO. 19 OF 2015**
IN
CRIMINAL REVISION APPLICATION NO. 9 OF 2015

Ramnath Mahalsekar,
s/o S. Mahalsekar,
Major in age,
r/o Padmanabhnagar,
Baada, Karwar,
Uttar Kannada.

... Applicant.

Versus

Sanjay Kumar Bagla,
Major in age,
A Proprietorship concern
in the name and style of
M/s Raadhas,
Having their address at
B2/F2, Milroc Woods,
Corlim, Ilhas, Goa.

... Respondent.

Mr. S. M. Walwaikar, Advocate for the Applicant.

Mr. Ajit R. Kantak, Advocate for the Respondent.

Coram :- U. V. BAKRE, J.

Date :- 18th February, 2015.

ORDER:

Heard Mr. Walwaikar, learned Counsel for the applicant and Mr. Kantak, learned Counsel for the respondent.

2. By this application, the applicant has prayed for stay of the operation of the impugned order dated 17.01.2014, passed by the learned Judicial Magistrate, First Class, Panaji, Goa (J.M.F.C., for short), in Criminal Case No. 181/OA/Ni/2012/C and the judgment and order dated 26.11.2014, passed by the learned Additional Sessions Judge, Panaji, Goa, in Criminal Appeal No. 15/2014 and to grant bail to the applicant.

3. The applicant was the accused in the said Criminal Case No. 181/OA/Ni/2012/C which was filed by the respondent under Section 138 of the Negotiable Instruments Act, 1881 (N.I. Act, for short). The applicant has been convicted and sentenced to undergo simple imprisonment for one year and to pay compensation of ₹ 13,00,000/- and in default of payment of compensation, to undergo simple imprisonment for a period of six months. Aggrieved by the said order of the learned J.M.F.C., the applicant had filed Criminal Appeal No. 15/2014 and by judgment and order dated 26.11.2014, the learned Additional Sessions Judge, Panaji has dismissed the said appeal thereby maintaining the judgment and order dated 17.01.2014 passed by the learned J.M.F.C. Since the accused/applicant had

remained absent on the date of the judgment before the learned Additional Sessions Judge, a non-bailable warrant has been issued against the applicant for being committed to the jail and proceedings have been remitted to the learned J.M.F.C., 'C' Court, Panaji for enforcement of the said order.

4. Mr. Walwaikar, learned Counsel for the applicant, submitted that the applicant has surrendered before this Court. He urged that the learned Additional Sessions Judge while passing the impugned sentence did not look into the aspect of ability of the applicant to pay the said huge amount. Of compensation. In this regard, he relied upon the judgment of the Hon'ble Supreme Court in the case of **"K. A. Abbas H.S.A Vs. Sabu Joseph and Another"**, reported in [(2010) 6 SCC 230]. He submitted that the financial condition of the applicant is precarious, since the business of the barge of the applicant carrying iron ore has been badly affected due to ban on iron ore mining in the State of Goa. He submitted that the applicant could not remain present on the date of the judgment before the learned Additional Sessions Judge as he had to accompany his old aged father to the hospital in Mangalore as his father's condition was very critical.

He submitted that the learned J.M.F.C., by order dated 17.01.2014, had stayed the impugned judgment and order and that even the learned Additional Sessions Judge had stayed the sentence and granted bail to the applicant till the disposal of the appeal. He pointed out that the bail bonds of the accused as well as the surety are not cancelled and are still in force. He relied upon the judgment of the Hon'ble Supreme Court in the case of "**Stanny Felix Pinto Vs. M/s Jangid Builders Pvt. Ltd.**", [2001(5) BCR 500] and submitted that the Revisional Court could suspend the sentence with a condition that the applicant could remit a part of the amount directed to be paid as compensation.

5. On the other hand, Mr. Kantak, learned Counsel for the respondent submitted that since 2012, the respondent has been waiting for his case to be finished and for the receipt of amount which was due from the applicant. He relied upon the judgment of the Hon'ble Supreme Court in the case of "**R. Mohan Vs. A. K. Vijaya Kumar**", reported in [(2012) 8 SCC 721], wherein it has been observed that the idea behind directing the accused to pay compensation is to immediately alleviate his grievance. He further

submitted that the learned Additional Sessions Judge did not have any power to suspend his own judgment and sentence. He submitted that the learned Additional Sessions Judge even, did not have power to grant time to the applicant to surrender before the Trial Court. He, therefore, urged that the N.B.W. issued by the learned Additional Sessions Judge is proper. He relied upon the judgment of this Court in the case of "***Dhondu Raghoba Govekar Vs. State through the Public Prosecutor High Court, Panaji***", reported in [2013 (2) Goa L.R. 724 (Bom)]. The learned Counsel submitted that the applicant/accused must be directed to surrender before the learned J.M.F.C. and thereafter, he may file the application for bail before this Court, if the law permits. He submitted that the accused is playing with the Courts by not surrendering as per the direction of the learned Additional Sessions Judge. He added that the applicant is also not depositing the entire amount of compensation. He therefore, urged that the surrender by applicant before this Court may not be accepted and his application for bail be rejected.

6. I have considered the arguments advanced by the learned Counsel for both the parties and also the judgments relied upon by

them.

7. Admittedly, during the pendency of the Criminal Case No. 181/OA/NI/2012/C, the applicant was throughout on bail and even after the impugned judgment and order of conviction dated 17.01.2014, the learned J.M.F.C. had stayed the said order. Admittedly, during the pendency of the Criminal Appeal No. 15/2014, the impugned sentence was stayed and the applicant was on bail. As has been held by this Court in the case of "**Dhondu Raghoba Govekar**" (supra), the lower Appellate Court has no power to suspend the sentence or to grant time to surrender before the Trial Court after maintaining the judgment and sentence imposed by the Trial Court. This Court has observed that the lower Appellate Court should ensure that the accused remains present at the time of the judgment imposed by the learned Magistrate is confirmed or modified and if, in spite of such direction, the accused chooses not to remain present, the lower Appellate Court shall pronounce the judgment by invoking power under Sub-section (2) of Section 418 of the Criminal Procedure Code and issue warrant for his arrest for confining him to jail, for the purpose of sentence imposed on him. The learned

Additional Sessions Judge has, thus, rightly issued N.B.W. against the applicant. However, admittedly, against the judgment and order passed by the learned Additional Sessions Judge, revision application is maintainable. The applicant has filed Criminal Revision Application No. 9/2015 against the impugned orders of the lower Courts and has also surrendered before this Court. In Criminal Miscellaneous Application No. 31/2015, the applicant has specifically prayed for leave to surrender before this Court and to consider his application for bail. The applicant has stated on oath that on account of sickness of his father as he had to accompany his aged father to the hospital in Mangalore, he could not attend the Court of the learned Additional Sessions Judge on the date of the judgment. The compensation that has been awarded is ₹ 13,00,000/-. In the case of **"K. A. Abbas H.S.A."** (supra), the Hon'ble Supreme Court reiterated the law laid down in the case of **"Hari Singh Vs. Sukhbir Singh"**, reported in [(1988) 4 SCC 551], wherein *inter-alia* it has been held that the quantum of compensation may be derived by taking into account the nature of the claim, the judgment and the ability of the accused to pay. From the impugned judgment passed by the learned Additional Sessions Judge, it appears that the direction of the Hon'ble Supreme

Court as above, to ascertain the ability of the applicant to pay compensation, has not been complied with. In any case, the applicant has shown willingness to deposit the amount of ₹ 5,00,000/-. In the case of "**Stanny Felix Pinto**" (supra), the accused was convicted and sentenced under Section 138 of the N.I. Act to undergo imprisonment and also to pay the fine of ₹ 20,00,000/-. The Revisional Court had suspended the sentence and had imposed a condition that the accused will remit ₹ 4,00,000/- out of ₹ 20,00,000/- in the Court. The Hon'ble Supreme Court held that this is perfectly legal. Thus, in the present case, it is not necessary to direct the applicant to deposit the entire compensation that has been ordered to be paid by him to the respondent.

8. Considering all the aspects of the case and in the interest of justice, the following order is made:

- i. The surrender of the applicant/accused is accepted. The impugned judgment and order dated 17.01.2014 passed by the learned Judicial Magistrate First Class in Criminal Case No. 181/OA/NI/2012/C confirmed by the judgment and order dated 26.11.2014 of the Additional Sessions Judge, in Criminal Appeal No.15/2014, is suspended, until the final disposal of the revision

application before this Court.

ii. N.B.W. issued by the learned Additional Sessions Judge, Panaji, is cancelled. The applicant shall be released on bail upon execution of personal bond of ₹ 25,000/- with one solvent surety in the like amount, under the following conditions, namely:-

(a) The applicant shall remain present before this Court for all hearings, unless he seeks exemption for genuine reasons.

(b) The applicant shall deposit before this Court an amount of ₹ 7,00,000/- (Rupees Seven Lakhs only), out of the compensation amount, within a period of three weeks from today, failing which the bail granted would be likely to be cancelled.

(c) The bail bonds shall be executed to the satisfaction and before the learned Deputy Registrar of this Court, today before 5:30 p.m.

9. The application stands disposed of.

U. V. BAKRE, J.