

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO. 31 OF 2015

Mr. Bonny Fernandes,
Son of Mr. Andrew Cyril Fernandes,
Aged 51 years, married,
resident of Flat 2FFI,
Building No. 2,
Prudential Palms, Chogum Road,
Porvorim, Goa, at present residing
at Socorro Gardens, Gladiolous 302,
Socorro, Bardez, Goa.

... Petitioner

Versus

1. Mr. Ashwyn Victor Nazareth,
Son of Mr. Alwyn Nazareth,
Aged 28 years, Residing at 6-UG1,
Building No. 6, Prudential Palms,
Chogum Road, Porvorim – Goa.

2. State, through the
Public Prosecutor,
High Court, Panaji, Goa.

... Respondents

Shri Aldrin Monteiro, Advocate for the Petitioner.

Shri Jayant Mulgaonkar, Advocate for the Respondents.

CORAM:- C. V. BHADANG, J.

DATE:- 27th MARCH, 2015

ORAL ORDER:

Heard the learned Counsel for the parties.

2. The petitioner was convicted for the offence punishable under Section 138 of the Negotiable Instruments Act and has been sentenced to simple imprisonment for six months. The petitioner is also directed to pay compensation of Rs.25,25,000/- and in default to undergo simple imprisonment for ten months. The petitioner has challenged the same in criminal appeal, which is pending before the learned Sessions Judge. It appears that by an order dated 19.06.2014, the substantive sentence was suspended, *inter alia* on the condition of the petitioner depositing half the cheque amount awarded as compensation, within one month.

3. It is not disputed that the petitioner had sought extension of time to deposit the amount, which was allowed. Subsequently, the petitioner filed an application, for reduction of the amount, to be deposited, to Rs.1,00,000/-. That application was rejected by the learned Sessions Judge on 15.12.2014. This order was challenged by the petitioner in Criminal Revision Application No. 63/2014 and this Court by judgment and order dated 04.02.2015 had dismissed the revision application *inter alia* on the ground that the petitioner had not challenged the earlier

order dated 19.06.2014. It is thereafter, that the petitioner has approached this Court, challenging the order dated 19.06.2014.

4. It is submitted by the learned Counsel for the petitioner that the parties have exchanged certain e-mails and that they are in process of negotiating a settlement. He submitted that the petitioner could not arrange for the huge amount and in the event, if the amount is not reduced, the petitioner may not get effective hearing in the appeal.

5. The learned Counsel for the respondents has supported the impugned order. It is submitted that the petitioner has belatedly challenged the order dated 19.06.2014. He submitted that sufficient time has elapsed in as much as, one month's time was granted to the petitioner. However, till today the amount is not deposited. It is further submitted that there is acquiescence to the order in as much as extension of time was sought, by the petitioner for compliance of the order.

6. On hearing the learned Counsel for the parties, I do not

find that any case for interference is made out. In so far as the parties negotiating a settlement is concerned, the parties are always at liberty to do so and in the event, they reach such settlement, they can move the learned Sessions Judge, who can pass appropriate order.

7. Undisputedly, the petitioner had sought extension of time to deposit the amount and thus had acquiesced in the said order dated 19.06.2014. In the earlier round of litigation, the petitioner did not choose to challenge the order dated 19.06.2014. The petitioner cannot now be heard to say that the amount, be reduced.

8. It is alternatively submitted by the learned Counsel that he may be granted liberty to move the learned Sessions Judge for extension of time.

9. The petitioner can move such application and if filed, it would be open for the learned Sessions Judge to pass appropriate order thereon, in accordance with law.

10. In the circumstances, the writ petition is dismissed, with no order as to costs.

C. V. BHADANG, J.

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