

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL REVISION APPLICATION NO. 63 of 2014

Mr. Bonny Fernandes,
Son of Mr. Andrew Cyril
Fernandes,
Aged 51 years, married,
resident of Flat 2FF1, Building
No. 2, Prudential Palms,
Chogum Road, Porvorim,
Goa, present residing
at Socorro Gardens,
Gladiolous 302, Socorro,
Bardez, Goa. .. Applicant.

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.

Mr. Aldrin Monteiro, Advocate for the applicant.

Mr. Jayant Pandurang Mulgaonkar, Advocate for respondent no. 1.

Mr. M. Amonkar, Additional Public Prosecutor for respondent no. 2.

Coram :- U. V. BAKRE, J.

Date : 4th February, 2015.

ORAL ORDER :

Heard Mr. Monteiro, learned Counsel for the applicant; Mr.

Mulgaonkar, learned Counsel for the respondent no. 1 and Mr. Amonkar, learned Additional Public Prosecutor for respondent no. 2.

2. By this revision application, the applicant has prayed for quashing and setting aside the order dated 15/12/2014 passed by the learned Additional Sessions Judge, Mapusa in Criminal Appeal No. 50/2014.

3. The applicant was the accused in Criminal Case No. OA/709/NIA/2010/A and vide judgment and order dated 02/04/2014, he has been held guilty, convicted and sentenced for the offence under Section 138 of the Negotiable Instruments Act to undergo Simple Imprisonment for six months and to pay compensation of ₹ 25,25,000/- to the complainant i.e. respondent no. 1 and in default, to undergo Simple Imprisonment for ten months. The applicant has challenged the said judgment and order of the Judicial Magistrate, First Class, (J.M.F.C.) before the Additional Sessions Judge, Mapusa by filing Criminal Appeal No. 50/2014. It appears that by order dated 19/06/2014, the sentence imposed by the learned J.M.F.C. has been suspended by the learned Additional Sessions Judge upon execution of bond with surety and subject to depositing half of the cheque amount. On 01/10/2014, the applicant filed an application before the

Additional Sessions Judge for extension of suspension of the sentence by four weeks to permit the applicant to arrange for the money to be deposited before the said Court. On 30/10/2014, a last opportunity was given to the applicant to deposit the amount within three weeks. Subsequently, on 15/12/2014, the applicant filed two applications before the learned Additional Sessions Judge. One was for reduction of the amount to be deposited to ₹ 1,00,000/- or in the alternative to make an order to hear the appellant on merits by continuation of the order of suspension of sentence till the date of disposal of the appeal. The other application was filed for exemption of the applicant from personal appearance for that day. Both the applications have been dismissed by the learned Additional Sessions Judge, by orders dated 15/12/2014. The learned Additional Sessions Judge has held that she has no power to set aside her own order and that on 30/10/2014, at the request of the learned Advocate of the accused, three weeks' time was granted as last opportunity to the applicant to deposit security as directed by the Court, but till date, the applicant did not comply with the said order. The application to reduce the amount to be deposited to ₹ 1,00,000/- was thus rejected by the learned Additional Sessions Judge. A bailable warrant was issued against the applicant. This order dated 15/12/2014 is challenged in the present revision application.

4. Mr. Monteiro, learned Counsel for the applicant submitted that the applicant had made all the attempts to arrange for the money to deposit half of the cheque amount and for that purpose, had asked for extension of time by three weeks. He submitted that however, unfortunately, the mother of the applicant fell sick and ultimately, died of Cancer, due to which, he had to spend lot of money and is now unable to deposit the said half of the amount of the cheque. He, therefore, urged that in the interest of justice, the said amount to be deposited be reduced to ₹ 1,00,000/- or in the alternative, the learned Appellate Court be directed to dispose of the appeal finally within a fixed time and till then, the impugned judgment be suspended. Learned Counsel also submitted that his revision application is likely to be dismissed by the Additional Sessions Judge on account of non compliance of the order of deposit of amount and this will cause great prejudice to the applicant. He relied upon the judgment of the Apex Court in the case of ***"Vijay D. Salvi Vs. State of Maharashtra and others"*** reported in (2007) 3 SCC (Cri) 13 and submitted that appeal/Revision cannot be dismissed for non-deposit of amount of fine.

5. On the contrary, Mr. Mulgaonkar, learned Counsel for the respondent no. 1 submitted that by order dated 19/06/2014, the

sentence was suspended on furnishing bond and on depositing half of the cheque amount. He pointed out that on successive occasions, the applicant submitted to the order and prayed for extension of time to deposit the said amount. The learned Counsel, therefore, argued that it does not lie in the mouth of the applicant now to pray for reduction of the amount to be deposited. He submitted that there is absolutely no evidence produced by the applicant about spending any money for his mother. He submitted that the learned Additional Sessions Judge had no powers to alter or modify its earlier order. He pointed out that the said earlier order dated 19/06/2014 has not been challenged and, therefore, even if the impugned order refusing to reduce the amount is set aside, the order dated 19/06/2014 will still remain. He pointed out that presently a non-bailable warrant has been already issued by the Additional Sessions Court which has not been cancelled. He, therefore, prayed that the revision application deserves to be dismissed.

6. I have gone through the material on record. I have also considered the arguments advanced by the learned Counsel for the parties. It is noticed from the material produced by the applicant on record that though copies of the application for suspension of sentence filed on 16/05/2014 and application for extension of suspension of sentence by four weeks, dated

1/10/2014, have been produced on record, however, white ink has been applied on the orders passed thereon by the learned Additional Sessions Judge for reasons best known to the applicant. Be that as it may, there is no dispute that by initial order dated 19/06/2014, the sentence imposed by the learned J.M.F.C. was suspended on furnishing bond and on depositing half of the cheque amount. The said order dated 19/06/2014 has not at all been challenged. What is challenged is the order dated 15/12/2014 and it is prayed that the said order dated 15/12/2014 be quashed and set aside. As rightly urged by the learned Counsel for the respondent no. 1 even if the said order impugned in the present revision application is set aside, the main order dated 19/06/2014 will still remain.

7. Even otherwise, the applicant has actually submitted to the said order dated 19/06/2014 by asking for extension of time to deposit the said amount on successive occasions. Absolutely, no evidence has been produced by the applicant to show that he had spent lot of money towards the sickness of his mother. Learned Additional Sessions Judge rightly dismissed the application for want of powers to review its own order. It is reported that bailable warrant was ordered to be issued against the applicant and now N.B.W. has been issued.

8. The contention of the learned Counsel for the applicant that the revision application filed by him before the learned Additional Sessions Judge would be dismissed for non-deposit of amount of compensation has no substance at all. It is settled law that revision application cannot be dismissed for non-deposit of the amount of fine or compensation. In the case of *"Vijay D. Salvi"* (supra), the Hon'ble Supreme Court, while setting aside the order of dismissal of the appeal and revision for non-deposit of fine amount and directing the appellate Court to dispose of the appeal on merits, further directed the trial Court to take all coercive steps for realisation of fine amount awarded by trial Court.

9. In all the circumstances above, no case has been made out for interference with the impugned order.

10. In the result, the revision application is dismissed.

U. V. BAKRE, J.

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