

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 55 OF 2015

Mr. Mohanrao Keshawarao
Maheshwarkar

...Applicant

Versus

HDFC Bank Ltd. & Anr.

...Respondents

Mr. Rajesh B. Parab for the Applicant.

Mr. Vivek Patil for Respondent No.1

Mrs. A.A. Mane, APP for Respondent No.2-State.

CORAM:-M.L. TAHALIYANI, J.

DATED :28th APRIL, 2015.

P.C.

Heard learned counsel for the Applicant and Respondent No.1. Heard learned APP for Respondent No.2-State.

2. Admitted. Heard finally.

3. The Applicant has been convicted for the offence punishable under section 138 of the Negotiable Instruments Act (hereinafter referred to as 'the Act') and is sentenced to suffer SI for three months and to pay a fine of Rs.5,000/-. His appeal has been dismissed by the Sessions Court.

4. Initially this Court thought that dispute could be amicably resolved as the amount of cheque was only Rs.11,000/- (approximately). The complainant is HDFC Bank. Learned counsel for the complainant/ Respondent No.1 has submitted that there are many other cheques issued by the Applicant in discharge of loan amount, which have been dishonored by his bankers. Despite that the Court was of the view that matter could be compounded and it was directed that the Applicant should remain personally present before the Court. The Applicant has always avoided to appear before the Court and has shown total disregard for the Court.

5. As far as merits of the case are concerned, there is nothing on record to show that there was no legally enforceable liability or there was any defect in service of notice. Trial Court as well as Appellate Court have given finding that there was legally enforceable liability for which cheques had been issued and had been dishonored. Both the courts below have also given finding that the Applicant has failed to make payment despite statutory notice. As such, there is no scope for interfering with the judgments of the learned Magistrate and the Sessions Court.

6. As far as sentence part of the judgment of Sessions Court is concerned, it appears that learned Sessions Judge has enhanced the amount of compensation from Rs.5,000/- to Rs.22,000/-. This enhancement could not have been done unless there was a revision application on behalf of Respondent No.1 for enhancement of the sentence. In my view, learned Sessions Judge has committed error in enhancing the compensation amount in the appeal filed by the Applicant against the judgment and order of the conviction. Therefore, in my view order of learned Magistrate needs to be restored and order of learned Sessions Judge needs to be set aside. Hence, I pass following order :-

- a)The Criminal revision application is partly allowed.
- b)The conviction of the Applicant for the offence punishable under section 138 of the Act is maintained.
- c)The order of the learned Magistrate in respect of sentence, fine and compensation is maintained. The order of the learned Sessions Judge is accordingly modified.

7. The Criminal revision application stands disposed of accordingly.

(JUDGE)