

Sewree (W,
Mumbai 400 086

.. Respondents.
Respondent No.1 orig.
Complainant.

ALONGWITH
WRIT PETITION NO.1446 OF 2006
WITH
WRIT PETITION NO.1447 OF 2006
WITH
WRIT PETITION NO.1459 OF 2006

1. M/s Paras Clearing and Forwarding
Agencies Pvt. Ltd.
16/1 Meghal Service Indl Estate.
Lal Devidayal road,
Near Fire Brigade,
Mulund (W), Mumbai 400 080.

2. Mr.Nandlal Madhabji Thakkar
age: 53 years,
Director,
M/s Paras Clearing and Forwarding
Agencies Pvt. Ltd.
16/1 Meghal Service Indl Estate.
Lal Devidayal road,
Near Fire Brigade,
Mulund (W),
Mumbai 400 080.

.. Petitioners.
Orig. accused

V/s.

1. State of Maharashtra.

2. Mr. Kanubhai M. Thakkar,
r/o 403, Alaknanda,
Nilkanth Valley,
7th Rajawadi Road,
Ghatkopar (E)
Mumbai 400 077

.. Respondents.

Respondent No.1 orig.
Complainant.

Mr. S. V. Marwadi i/by Mr. S.P. Narkar, for
the Petitioners in all Petitions.

Mr. Harshad A. Sathe i/by Harshad A.
Bhadbhade, for Respondent No.2 in all the
petitions.

Smt. P. P. Bhosale, APP for the Respondent
State in all the petitions.

CORAM : M. L. TAHALIYANI, J.

DATE : 15th January, 2015.

Oral Judgment.

First four Writ Petitions arise out of
orders passed by the learned Additional
Sessions Judge in Criminal Revision
Application Nos.495 of 2005, 496 of 2005, 497
of 2005 and 498 of 2005, respectively. Next
three Writ Petitions have arisen out of orders
passed by the learned Additional Sessions
Judge in Criminal Revision Application Nos.18
of 2006, 19 of 2006 and 20 of 2006,
respectively.

2. In all 7 Criminal Cases were filed under

Section 138 of the Negotiable Instruments Act, against present Petitioners. Out of these 7 cases, four cases were filed by Respondent/Complainant Meena C. Somaiya, and three were filed by Respondent/Complainant Kanubhai Thakkar, in the court of Metropolitan Magistrate, Mazgaon, Mumbai. Petitioner No.1 M/s Paras Clearing and Forwarding Agency is a Private Limited Company and Petitioner No.2 was one of the Directors of the company.

3. Both the Petitioners have been convicted by the learned Magistrate for the offence punishable under Sections 138 of the Negotiable Instruments Act. The accused No.1 M/s Paras Clearing and Forwarding Agency was sentenced to pay fine of Rs.2,000/- in each case. The accused No.2 was sentenced to suffer Simple Imprisonment till rising of the Court and to pay compensation of Rs.1,75,000/- in Criminal Case No.257/SS/2005, Rs.2,25,000/- in Criminal Case No.1942/SS/2005, Rs.3,00,000/-

in case No.589/SS/2005, Rs.1,50,000/- each in case Nos.1282/SS/2005, 102/SS/2005 and 248/SS/2005, and Rs.3,00,000/- in Criminal Case No.587/SS/2005. As such the accused No.2 i.e. the Petitioner No.2 Nandlal Thakkar was also to undergo simple imprisonment till rising of the Court and to pay fine Rs.14,50,000/-. Out of said Rs.14,50,000/-, a part of the amount in each case was also to be paid to the State Government and rest of the amount was to be paid to respective complainants by way of compensation. As such complainant Mr. Kanu Thakkar, was entitled to Rs.5,60,000/- by way of compensation and the other complainant Meena Somayya was to receive Rs.7,80,000/- by way of compensation.

4. Both the complainants having not satisfied with the judgment and order of the learned Magistrate, moved the Sessions Court by filing separate 7 Revision Applications. The learned Additional Sessions Judge

maintained the order of fine and the compensation. However, he had enhanced the sentence of Simple Imprisonment from till rising of the Court to three months in group of four cases and to six months in a group of three cases. It is this order of learned Additional Sessions Judge which is being challenged in the present Writ Petitions by the Petitioners.

5. Heard Mr. Marwadi, learned counsel for the Petitioners and learned counsel Mr. Harshad A. Sathe, for the Respondent No.2 (original complainants). During the course of arguments, learned counsel Mr. Marwadi, for the Petitioners has submitted that an amount of compensation and fine could have been paid by the Petitioner on the date of judgment of trial Court itself. The Respondents refused to accept the same. The position as on today is that the Petitioners have paid an amount of fine as well as compensation to be paid to the

Complainants in the trial Court. The Petitioners have deposited another amount of Rs.6,00,000/- in this Court pursuant to the orders passed by this Court. As such total amount deposited by the Petitioners in the trial Court as well as in this Court comes to Rs.20,50,000/-. Out of this, an amount of Rs.1,05,000/- will go to the State Government by way of fine. Rest of the amount that comes to Rs.19,45,000/- will be the compensation amount. The fine amount is admittedly near about double the amount of cheque.

6. Learned counsel Mr. Marwardi has submitted that in view of the fact that amount of compensation is now about double the amount of cheques, this court may maintain the orders passed by the learned Magistrate and set aside the order passed by the learned Sessions Judge.

7. Learned counsel for the Respondents original Complainants has submitted that the

Petitioner No.2 is in habit of taking loans and not paying within time and that he is habitually indulging in such type of transactions. It is submitted that the Petitioner No.2 had about 100 cases pending against him under Section 138 of the Negotiable Instruments Act. In this case, also it was submitted that the Petitioner No.2 was ready to pay amount when he found that he was about to be convicted by the learned Magistrate.

8. Learned counsel Mr. Marwadi, for the Petitioners submitted that the statement made by the counsel for the Complainants that there are 100 cases against the Petitioner No.2 is not correct. It is admitted by the Petitioner No.2 that there were few cases against him under Section 138 of the Negotiable Instruments Act which have been settled. It is submitted that most of the cases are compounded and this is last bunch of

cases pending against him in Mumbai. It is also submitted by learned counsel Mr. Marwadi that it is not the case that amount equivalent to double the cheque amount has been deposited by the Petitioner No.2 recently. It was brought to my notice that out of Rs.20,50,000/- an amount of Rs.14,50,000/- which is much more than the cheque amount was deposited as back as in the year 2005. In this regard it may be noted that additional amount of Rs.6 lacs has been deposited by the Petitioner No.2 recently. If this amount is taken into consideration the total amount comes to Rs.20,50,000/- i.e. near about double the cheque amount. As already stated Rs.1,05,000/- will go to the Government by way of fine.

9. Mr. Marwadi has submitted that rest of the amount may be paid to the Respondents original Complainants by way of compensation. Learned counsel for the Respondents, however,

vehemently submitted that considering the conduct of the Petitioner No.2 and considering the time consumed by these 7 cases and other cases filed by the Respondents against the Petitioners, this Court may not show any leniency to the Petitioner No.2. Learned counsel for the Respondents is of the view that such a litigant deserves to be sent to jail at least for few months.

10. I have considered the rival arguments advanced by both learned counsel. However, I am of the view that since transaction was of commercial nature and since compensation granted by the trial Court was more than cheque amount and since compensation was deposited by the Petitioners in the trial Court as back as in the year 2005 i.e. immediately after the judgment of trial Court, the Petitioner No.2 deserve leniency. Moreover, the Petitioner No.2 has offered to pay Rs.6,00,000/- which have already been

deposited by him. In my opinion no case is made out for awarding harsh punishment on the Petitioner. For all these reasons I pass the following order.

ORDER

i) The order passed by the learned Metropolitan Magistrate in respect of payment of compensation to the Respondents Kanubhai Thakkar and Mrs. Meena Somaiya is maintained.

ii) The order of the learned Magistrate in respect of sentence imposed on the petitioner No.2 that he shall undergo Simple Imprisonment till rising of the Court is also maintained.

iii) The punishment awarded against Petitioner No.2 i.e. Simple Imprisonment till rising of the Court shall begin from tomorrow at 11.00'O clock.

iii) It is further ordered that additional amount of Rs.6,00,000/- deposited by the Petitioner No.2 in this Court, shall be paid to both Respondents namely Kanubhai Thakkar and Meena Somaiya in the proportion of 50 :

50. As such both of them should get Rs.3 lacs each from this Court and rest of the amount of compensation as already deposited in the trial Court shall be paid to them immediately.

iv) The order of the learned Additional Sessions Judge is modified accordingly in above terms.

iv) Writ Petitions stand disposed of.

(M. L. TAHALIYANI, J.)