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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO. 147 OF 2014

Venkat s/o Bhimrao Jadhav
Proprietor of,
Jadhav Building Material Suppliers
Age: 40 years, Occ: Business,
R/o. 12 No. Pati, Vilas Nagar,
Latur, Ta. and Dist. Latur. ..APPLICANT

VERSUS

Shaikh Chand Fatteh Mohammad
Proprietor of Hindustan Tyres,
Ambajogai Road, Latur & anr. ..RESPONDENTS

**WITH
CRIMINAL APPLICATION NO. 5518 OF 2015
IN
CRIMINAL REVISION APPLICATION NO.147 OF 2014**

Shaikh Chand Fatteh Mohammad
Age: 65 years, Occ: Business,
R/o. Amba Hanuman, Ambajogai
Road, Latur, Tq. & Dist. Latur. ..APPLICANT

VERSUS

Venkat s/o Bhimrao Jadhav,
Age: 40 years, Occ: Business,
Proprietor of,
Jadhav Building Material Supplies
R/o. 12 No. Pati, Vilas Nagar,
Latur, Tq. and Dist. Latur
& anr. ..RESPONDENTS

Mr P. P. Dudile, Advocate for applicant in C.R.A.
No. 147 of 2014 and for respondent No.1 in Criminal
Application No. 5518 of 2015
Mr R. D. Biradar, Advocate for respondent No.1 in

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C.R.A. No.147 of 2014 and for applicant in Criminal Application No.5518 of 2015
Mr K. D. Munde, A.P.P. for respondent/state

CORAM : N.W. SAMBRE, J.

DATE : 25th OCTOBER, 2016

ORAL ORDER :

With the consent of the parties, present criminal revision application is taken out for final disposal at admission stage.

2. The applicant-accused was convicted by learned Judicial Magistrate, First Class, Latur vide judgment and order dated 9th February, 2011 in Summary Triable Case No. 1795 of 2008 for the offence punishable under Section 138 of the Negotiable Instruments Act and was sentenced to suffer simple imprisonment for six months, with compensation of Rs.1,50,000/-. Learned Additional Sessions Judge, Latur, vide judgment and order dated 16th June, 2014 dismissed the appeal being Appeal No.33 of 2011 preferred by the applicant. As such, present criminal revision application.

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3. It is urged that the applicant has already deposited the compensation amount of Rs.1,50,000/-. Learned Counsel for the applicant submits that but for present proceedings, the applicant is not convicted in any other crime. According to him, benefit of the provisions of Probation of Offenders Act be extended to the applicant.

4. The claim is strongly opposed by learned Counsel for the complainant, as according to him, both the Courts below have convicted the accused and sentenced him to suffer simple imprisonment for the period of six months.

5. Having considered the rival submissions, it is to be noted that the provisions of Negotiable Instruments Act cannot be used for the purpose of recovery of the amount.

6. The conviction of the applicant is based on the testimony of the complainant at Exhibit-27

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and the evidence of statutory accountant, who was examined at Exhibit-48. Other documentary evidence are also taken into account. The defence of the accused was rightly appreciated by the Courts below, which was in the form of security given towards purchase of the material.

7. In my opinion, both the Courts below have rightly inferred that the accused has committed the offence punishable under Section 138 of the Negotiable Instruments Act. As such, no interference is warranted, on merits.

8. It is reported that the applicant has undergone sentence of 12 days out of six months.

9. In view of the fact that the applicant has undergone sentence of 12 days and he has deposited compensation amount of Rs.1,50,000/- and he is not convicted during the pendency of the present proceedings for any other offence, it will be appropriate, in my opinion, to order release of the

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applicant, on the following terms :-

(a) The conviction awarded by learned Judicial Magistrate, First Class, Latur and confirmed by learned Additional Sessions Judge, Latur in appeal is maintained, however, his sentence is suspended.

(b) The applicant shall execute bond of good behaviour with one surety before the concerned Probation Officer for a period of one year, within period of one month from today.

(c) The complainant will be entitled to withdraw the amount of compensation, along with interest, if any, accrued thereon, which is deposited in this Court and in Sessions Court, Latur.

10. Present Criminal Revision Application stands disposed of in above terms.

11. In view of final disposal of criminal

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revision application, Criminal Application No. 5518 of 2015 does not survives, as such, same stands disposed of.

(N.W. SAMBRE, J.)

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