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

CRIMINAL REVISION APPLICATION NO.123 OF 2016

Pandurang s/o Shrimant Malge,
Age: 55 years, Occ: Agri.,
R/o. Kader, Taluka Omerga,
District Osmanabad.

..APPLICANT

VERSUS

1. The State of Maharashtra
2. Govind s/o Hanumant Malge,
Age: 40 years, Occ; Agri.,
3. Gopal s/o Limbaji Jadhav,
Age: 45 years, Occ: Agri.,
4. Balu s/o Limbaji Jadhav,
Age: 40 years, Occ: Agri.,

All R/o Kader, Tq. Omerga,
District Osmanabad.

..RESPONDENTS

Mr C.R. Deshpande, Advocate for applicant;
Mr R.V. Dasalkar, A.P.P. for respondent No.1;
Mr P.V. Barde, Advocate for respondent Nos.2 to 4

CORAM : N.W. SAMBRE, J.

DATE : 19th OCTOBER, 2016

ORAL ORDER :

Learned Judicial Magistrate, First Class,
Omerga (Court No.2) in Regular Criminal Case No.

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241 of 2000, convicted accused-respondents herein for an offence punishable under Section 325 read with Section 34 of the Indian Penal Code and sentenced to suffer rigorous imprisonment and fine of Rs.500/-, in default to suffer rigorous imprisonment for 15 days. The accused persons are further convicted for an offence punishable under Section 323 read with Section 34 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for seven days and fine of Rs.100/-, in default to suffer rigorous imprisonment for one day. Both the sentenced are ordered to run concurrently.

2. In Criminal Appeal No. 8 of 2010 against conviction preferred by respondents-accused, learned Additional Sessions Judge, Omerga, partly allowed the appeal and sentence awarded by learned Magistrate came to be modified by extending benefit of Section 4 of the Probation of Offenders Act, 1958 and it was directed that each accused person shall pay compensation of Rs.2500/- to the

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complainant Pandurang Shrimant Malge.

3. Mr. Deshpande, learned Counsel for the complainant makes two-fold submissions; (a) that in the facts and circumstances of the case, learned Sessions Judge ought not to have taken recourse to the provisions of Probation of Offenders Act, particularly having regard to seriousness of the offence as the accused were tried for an offence punishable under Section 325 of the Indian Penal Code and (b) inadequate compensation is awarded.

4. So far as the first submission is concerned, it is required to be noted that the Apex Court in the matter of **State through Central Bureau of Investigation, Anti Corruption Branch, Chandigarh Vs. Sanjiv Bhalla & anr.** reported in (2015) 13 SCC 444 in paragraph Nos. 25 and 28 has observed thus :

"25. There are other legislative requirements that need to be kept in mind.

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The Probation of Offenders Act provides, in Section 5 thereof for payment of compensation to the victim of a crime (as does Section 357 of the Criminal Procedure Code). Yet, additional changes were brought about in the Criminal Procedure Code in 2006 providing for a victim compensation scheme and for additional rights to the victim of a crime, including the right to file an appeal against the grant of inadequate compensation. How often have the courts used these provisions?

28. To sum up:

28.1. For awarding a just sentence, the trial Judge must consider the provisions of the Probation of Offenders Act and the provisions on probation in the Criminal Procedure Code;

28.2. When it is not possible to release a convict on probation, the trial Judge must

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record his or her reasons;

28.3. The grant of compensation to the victim of a crime is equally a part of just sentencing;

28.4. When it is not possible to grant compensation to the victim of a crime, the trial Judge must record his or her reasons; and

28.5. The trial Judge must always be alive to alternative methods of a mutually satisfactory disposition of a case."

5. Pursuant thereto, though the Magistrate has recorded findings as to why benefit of Probation of Offenders Act should not be extended and section 360 of the Code of Criminal Procedure could not be invoked in favour of the accused persons, however, learned Sessions Judge, by adequate reasons, has granted benefit thereto. In my opinion, the observations of learned Sessions

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Judge extending benefit of Probation of Offenders Act for the reasons stated in the order appears to be just and proper as same appear in tune with object of the said Act. One more aspect of which this Court must take note of is, the respondents-accused persons were very much qualified as per requirements of the provisions of Probation of Offenders Act to get benefit thereunder.

6. This takes me to the next submission of Mr. Deshpande, learned Counsel for the applicant to submit what is compensation awarded is Rs.2500/-, which was ordered to pay by each of the accused to complainant Pandurang Shrimant Malge. In my opinion, he is right in submitting that inadequate compensation was awarded looking to the seriousness of the allegations against accused persons.

7. Mr. Deshpande, learned Counsel for the applicant though has urged that sentence is set aside, which ought not to have been done by learned Sessions Judge, while extending benefit of

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provisions of Probation of Offenders Act, however in the scheme of said statute, it is required to be observed that while extending benefit under provisions of Probation of Offenders Act, conviction of the accused is not set aside. What is set aside is sentence which is awarded as the accused persons who released on probation upon executing bond as has been ordered in the present case. As conviction of the accused continues, in my opinion, no infirmity could be noticed in ordering setting aside sentence by learned Sessions Judge. The said contentions are also rejected.

8. In view of above, the amount of compensation as is awarded is enhanced from Rs.2500/- to be paid by each of the accused to Rs.8000/-. Mr. Barde, learned Counsel for the respondents, upon instructions, submits that the said amount shall be deposited before learned Magistrate within period of four weeks from today, to which complainant Pandurang Shrimant Malge will be entitled for withdrawal.

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9. With the above observations, present criminal revision application stands disposed of.

(N.W. SAMBRE, J.)

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