

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL REVISION APPLICATION NO.89 OF 2015
WITH
CRIMINAL REVISION APPLICATION NO.90 OF 2015
WITH
CRIMINAL REVISION APPLICATION NO.91 OF 2015**

Mrs. Swarupa Anilkumar Lodha Applicant
(Original Complainant)

vs.

1 Mr. Sukhdev Pukhraj Gehlot Respondent
(Ori. Accused, Resp. no.1)

2 The State of Maharashtra

Mrs. Swarupa Lodha, the Applicant in person.
Mr. T.D. Deshmukh, Advocate for Respondent No.1.
Mr. D.R. More, APP for the State of Maharashtra.

Coram : **Smt. R.P SondurBaldota, J.**

Date : 2nd March, 2016

P.C.

1 This is a common order on the above three Revision Applications, wherein parties are same and the questions arising for consideration are also same. The revisions arise out of the proceedings under Section 138 of Negotiable Instruments Act. The Revision Applicant is the original complainant and respondent no.1 is the original accused.

2 Respondent no.1 carries on business in the name and style of “Janta Delicious Sweet”. He was known to the applicant since a long time. On 7th April, 1999, the applicant gave a hand-loan in a sum of Rs.3,50,000/- to respondent no.1, in consideration of which he issued a Promissory Note and two cheques in the sums of Rs.2,00,000/- and Rs.1,50,000/- dtd. 5th August, 1999, drawn on Bank of Maharashtra, Nigdi Branch. On 8th August, 1999, she gave two more hand-loans, each in the sums of Rs.50,000/- to respondent no.1 and he issued four cheques dtd. 31st October, 1999 towards repayment of the hand-loans. The cheques were for the amounts of Rs.45,000/-, Rs.5,000/-, Rs.20,000/- and Rs.30,000/-, drawn on the same Bank of Maharashtra, Nigdi Branch. All the six cheques when presented for payment were dishonoured for the reason “exceeds arrangement”. On receipt of the notice of dishonour, the applicant sent the demand notices to respondent no.1 and on failure on his part to pay the amounts of cheques, she filed three proceedings under Section 138 of Negotiable Instruments Act. Criminal Case No.5026 of 1999 was in respect of the first two cheques, Criminal Case No.2868 of 2000 was in respect of cheques no. 3 and 4 and Criminal Case No. 2867 of 2007 was in respect of cheques no. 5 and 6. All the three cases were decided by the learned Magistrate, by judgments and orders dtd. 27th March, 2006. Respondent no.1 was found guilty of the offence punishable under Section 138 of

Negotiable Instruments Act. He was convicted and sentenced to suffer simple imprisonment for one year and pay fine of Rs.5,000/-. In default of payment of fine, he was to suffer simple imprisonment for one month. Respondent no.1 challenged the order of his conviction by preferring Criminal Appeals No.174 of 2006, 175 of 2006 and 176 of 2006 to the Sessions Court, Pune. Simultaneously, the applicant had also filed two Special Summary Suits being Suit Nos.143 of 2002 and 146 of 2003 seeking recovery of the total sum of Rs.4,50,000/- relating to the very transactions. The trial court decreed the suits and respondent no.1 has paid a sum of Rs.6,51,205/- towards execution of the decree. During the course of execution application, respondent no.1 also suffered civil imprisonment for a period of 40 days.

3 The Sessions Court after taking into consideration all the above facts was pleased to set aside the substantive sentence imposed upon respondent no.1 in each case on condition that he deposits an amount of Rs.1,00,000/- in Criminal Appeal No.175 of 2006, a sum of Rs.75,000/- in Criminal Appeal No.176 of 2006 and a sum of Rs.25,000/- in Criminal Appeal No.174 of 2006 towards compensation for the applicant. The direction has been complied with and respondent no.1 has deposited the amounts in the Sessions Court.

4 Feeling aggrieved by the order of the Sessions Court, the applicant has filed the present Revision Applications contending that the Sessions Court has erred in setting aside the substantive sentence awarded to respondent no.1 and sentencing him to payment of compensation. According to her once the offence under Section 138 of Negotiable Instruments Act stands established, the only proper punishment is of award of substantive sentence. She submits that the learned Sessions Judge has failed to appreciate her case and got himself misdirected by the civil remedy adopted by her.

5 The Sessions Court in the impugned judgment and orders appreciated the fact that respondent no.1 has fully satisfied the decree passed in the two suits filed by the applicant for recovery of the amounts under the six cheques and has expressed it's opinion that in that circumstance, it would be just and proper to send respondent no.1 behind bars to undergo substantive sentence of one year as directed by the learned Magistrate. The Sessions Court also took note of the fact that in the Darkhast proceedings, respondent no.1 was put in civil prison.

6 In my opinion, in the facts and circumstances of the case, the Sessions Court has shown the correct attitude and approach in deciding the three appeals. If the challenge to that order is permitted, it would be an act of being vindictive. Therefore, I find

no infirmity in the impugned orders. Hence, the Revision Applications are dismissed.

(Smt. R.P SondurBaldota, J.)