

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

CRIMINAL REVISION APPLICATION NO. 357 OF 2015

Subhash Samudayik Sahakari Shetki Sangh ... Applicant
Ltd., Manjari (Bk.) (Ori.Complainant)

vs.

Shri. Shivaji Jaywant Kalbhor and anr. ... Respondents

Mr. Dilip Bodake, Advocate for the applicant.
Ms. S. V. Gajare, Additional Public Prosecutor for the State.

Coram : Smt. R. P. SondurBaldota, J.
Date : 29th February, 2016.

P. C. :

1. This revision application preferred by the original complainant in the complaint under Section 138 of Negotiable Instruments Act is for enhancement of the punishment awarded by the trial Court to respondent No.1. By the judgment and order dated 11th May, 2015, the trial Court convicted respondent No.1 for the offence punishable under Section 138 of Negotiable Instruments Act and directed him to pay compensation of Rs.85,000/- to the applicant with further direction that on failure to pay the compensation, he would suffer simple imprisonment for a period of one month. The trial Court did not award any

substantive sentence to respondent No.1. The applicant desires that respondent No.1 be awarded imprisonment for a period of two years along with fine to the extent of twice the amount of cheque i.e. of Rs.4,14,808/-.

2. The applicant is a society registered under the Maharashtra Co-operative Societies Act and engaged in agricultural business. It cultivates sugarcane. Respondent No.1 is engaged in the business of jaggery production. He entered into agreement dated 24th March, 2011, with the applicant to purchase, at the rate of Rs.1100/- per ton, sugarcane cultivated on the land with total area of seven acres. The sugarcane was to be cut and carried away by respondent No.1 during the period 24th March, 2011 to 15th April, 2011. At the time of signing of the agreement respondent No.1 had deposited a sum of Rs.2,00,000/- with the applicant by way of security. The total sugarcane received by respondent No.1 weighed 302.188 ton. In the month of April 2011 respondent No.1 had made payment of Rs.1,25,000/- to the applicant. With due credit to that amount respondent No.1 was allegedly, liable to pay Rs.2,07,404/- to the applicant.

3. Respondent No.1 had issued cheque dated 16th June, 2011, in the sum of Rs.2,07,404/- drawn on the The Vishweshwar Co-operative Bank Ltd. Phursungi, Pune, to the applicant. When

that cheque was presented for payment, the same was dishonoured on the ground of “insufficient funds”. Thereafter, the applicant had served the statutory notice upon respondent No.1 and on failure to comply with the requisition in the statutory notice, filed proceedings under Section 138 Negotiable Instruments Act. The learned trial Judge noted that the applicant had failed to disclose in his complaint the payment of Rs.1,25,000/- by respondent No.1 to it, as also the deposit of Rs.2,00,000/- at the time of execution of the agreement dated 24th November, 2011. These two facts have been admitted by the witness of the applicant in his cross-examination. It, therefore, awarded compensation of Rs.85,000/- to the applicant.

4. Mr. Bodake, the learned advocate for the applicant submits that since respondent No.1 had not lead any evidence, the trial Court ought not to have considered either the payment of Rs.2,00,000/- at the time of execution of the agreement or payment of Rs.1,25,000/-. He further submits that, in fact, the applicant had already given credit for payment of Rs.1,25,000/- to respondent No.1. Therefore, the trial Court ought to have awarded compensation of double the amount of cheque to the applicant and also imposed substantive sentence upon him.

5. It is sought to be submitted that the impugned order suffers from jurisdictional error because the trial Court has not made proper resort to Section 325 and Section 360 Criminal Procedure Code. In the facts of the case, both the provisions do not have application. Section 325 Criminal Procedure Code comes into play, in the circumstances the Magistrate cannot pass sentence sufficiently i.e. beyond his power, he must follow the procedure prescribed therein. No such situation had arisen before the trial Court. Section 360 provides for an order to release the accused on probation of good conduct or after admonition. Since respondent No.1 is not released on probation of good conduct after admonition, even this provision is not applicable. The learned Judge has exercised his discretion in awarding the sentence of only fine to respondent No.1 and in my opinion no case has been made out to interfere with the same. Hence, the revision application is dismissed.

[Smt. R. P. SondurBaldota, J.]