

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

912 CRIMINAL REVISION APPLICATION NO.18 OF 2016

Musa Shaikh Saga
Age : 45 years, Occu : Labour,
R/o. 438, Subhash Nagar,
Lane No.5, Old Dhule, Tq. & Dist. Dhule

.. Applicant
(Orig. Accused)

VERSUS

Kailashwasi, Dilip Hari Amrate
Lokmangar Nagari Sahakari Pat Sanstha
Maryadit, Dhule.
Through, Dharmraj Ananda Patil,
Age : 42 years, Occu : Service,
R/o. C/o. Kailashwasi, Dilip Hari Amrate
Lokmangar Nagari Sahakari Pat Sanstha
Maryadit, Dhule, Lane No.5,
In front of Mahanagar Palika School No.9,
Dhule, Tq. & Dist. Dhule.

.. Respondent

...

Advocate for Applicant : Shri. Qureshi Shaikhlal Abdul G
Advocate for Respondents : Shri. M.S. Sonawane

...

WITH

CRIMINAL APPLICATION NO.4942 OF 2014

**CORAM : PR. BORA, J.
Dated: August 10, 2017**

ORAL JUDGMENT :-

. Heard Shri Qureshi, learned Counsel appearing for the revision applicant i.e. original accused and Shri Sonawane, learned Counsel appearing for the respondent i.e. original complainant. The applicant

was convicted by the Judicial Magistrate, First Class, Court No.8, Dhule in Summary Criminal Case No.5003/2004 for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and was sentenced to suffer Simple Imprisonment for two months and to pay a fine of Rs.16,000/- in default to undergo further Simple Imprisonment for two months. The revision applicant had preferred the Criminal Appeal No.58/2010 before the Sessions Court at Dhule challenging the order of conviction passed by the Magistrate, however the criminal appeal was also dismissed by the Sessions Court vide the Judgment delivered on 04.04.2014. Aggrieved by, the revision applicant has preferred the present revision application.

2. When the matter was taken up for hearing, the learned Counsel appearing for the revision applicant submitted that, the applicant had undergone the imprisonment from 09.07.2010 to 15.08.2010. The learned Counsel further submitted that, the applicant has deposited a total sum of Rs.20,000/- before the Court of JMFC, Dhule in three installments by Rs.5,000/-, Rs.3,000/- and Rs.12,000/-. The learned Counsel showed the receipts by which the payments were made in Judicial Magistrate First Class Court at Dhule.

3. The learned Counsel further submitted that, in view of the fact that, the applicant has already undergone the sentence for one month and one week and has also deposited the amount of Rs.20,000/- as was directed by this Court, the applicant now alternatively prays only for modification of the sentence awarded to him and to release him on the sentence already undergone and by imposing a fine of Rs.20,000/- on him.

4. The learned Counsel for the respondent submitted that, appropriate orders may be passed in view of the alternative submission made on behalf of the applicant. The learned Counsel submitted that, the applicant has deposited the amount of Rs.20,000/- in the trial Court and further prayed for remittance of the said amount in favour of the respondent in case the Court inclines to accept the alternate prayer made by the applicant.

5. It is not in dispute that, against the sentence of two months simple imprisonment, the applicant had already undergone the imprisonment for the period of one month and seven days. The applicant has also deposited the amount of Rs.20,000/- in the trial Court. The amount of dishonoured cheque was Rs.14,208/-. Considering the facts as aforesaid, the alternative prayer made by the

applicant deserves consideration. The learned Counsel for the respondent has also not opposed for accepting the request so made on behalf of the applicant. For the reasons stated above, I deem it appropriate to pass the following order.

ORDER

Though conviction of the applicant under Section 138 of the Negotiable Instruments Act, 1881 is confirmed, the sentence is modified as under :

- (i) The applicant is sentenced to suffer imprisonment already undergone by him with fine of Rs.20,000/- (Rs.Twenty Thousand Only).
- (ii) The amount of fine has already been deposited by the applicant in Judicial Magistrate First Class Court at Dhule. The said amount shall be paid to respondent i.e. original complainant.
- (iii) The criminal revision application stands partly allowed in the aforesaid terms.

(P.R. BORA, J.)

ggp