

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO. 239 OF 2015

Ganesh s/o. Annarao Motipawale,
Age 51 years, Occu. Labour,
R/o. Gopal Nagar, Near Railway Station,
Udgir, Dist. Latur.

....Petitioner.

Versus

1. The State of Maharashtra
2. Balasaheb s/o. Vyankatrao Jadhav,
Age 55 years, Occu. Labour,
R/o. Bhakaskehda, Tq. Udgir,
Udgir, Dist. Latur.

...Respondents.

Mr. Ajinkya Reddy, Advocate for petitioner.

Miss. S.S. Raut, APP for respondent No. 1/State.

Mr. Sunil V. Warad, Advocate for respondent No. 2.

CORAM : T.V. NALAWADE, J.

DATED : 10th January, 2017.

JUDGMENT :

1) Revision is admitted. Notice after admission made returnable forthwith. By consent, heard both the sides for final disposal.

2) Present proceeding is filed to challenge the judgment and order of S.T.C. No. 48/2011, which was pending in the Court of Judicial Magistrate, First Class, Udgir. In the private complaint filed for offence punishable under section 138 of Negotiable

Instruments Act by respondent Balasaheb Jadhav, petitioner Ganesh Motipawale is convicted and is sentenced to suffer S.I. for one month and is directed to deposit compensation of Rs. 3,50,000/- under section 357 (3) of Criminal Procedure Code. In default of making payment of compensation, he is made to suffer S.I. for one year. In Criminal Appeal No. 10/2014 this decision is confirmed by the Sessions Court and so, the decision of the appeal is also challenged by the present petitioner.

3) Following points were argued by the learned counsel for petitioner.

(i) The complaint was initially filed against two persons like Ganesh (present petitioner) and Shivmurti Motipawale, but the complaint was prosecuted only against Ganesh and not against Shivmurti.

(ii) The criminal Court has no power to give punishment of imprisonment in default of making payment of compensation, which can be more than 1/4th of the punishment which can be given for the offence.

4) This Court has carefully gone through the allegations

made in the complaint and evidence given by the complainant for considering the first contention. Admittedly, the cheque in question was given by the present petitioner Ganesh. Allegations are made that both Ganesh and accused No. 2 had approached the complainant to take hand loan. Though there is such allegation, it is not open to Ganesh to say that the amount was given only to Shivmurti as allegations were made against both of them. Further, there is specific allegation that only after giving of the amount by the complainant to the accused, cheque in question was given. Cheque was given on the account of Ganesh and it was signed by Ganesh. In view of these circumstances and the presumption available under section 139 of Negotiable Instruments Act, this Court holds that there is no force in the first ground.

5) So far as the second ground is concerned, the learned counsel for petitioner drew the attention of this Court to the provision of section 65 of Indian Penal Code. He placed reliance on the observations made by this Court in the case reported as **2015 ALL MR (Cri) 284 [Abdul Khabeer Vs. Mohd. Osmanoddin]**. At para No. 28 there are observation on which reliance is placed by the learned counsel for petitioner. The observations are as under :-

"28) The learned counsel for original complainant submitted in Criminal Revision Application No. 54/2014 that in ordinary course, sentence of imprisonment in default needs to be given. He placed reliance on the case reported as **AIR 2009 SC (Supp) 1435 : [2009 ALL MR (Cri) 3143 (S.C.)] [Vijayan Vs. Sadanandan K. and Anr.]**. This Court has gone through the observations made by the Apex Court in the reported case. The provisions of sections 421, 424, 431 and 357 of Code need to be kept in mind in this regard. In view of the facts of the case and the position of law, this Court holds that the appellate Court has committed error in not giving sentence in default for making the payment of compensation. In view of the provision of section 65 of the I.P.C., the sentence of simple imprisonment of six months can be given in default of making the payment of the compensation and in view of the facts of the case, the sentence of six months simple imprisonment needs to be given."

6) The offence is punishable under section 138 of Negotiable Instruments Act with imprisonment of two years. Thus, only 1/4th sentence of such period can be given as sentence in default of making payment of compensation amount. In the present matter, the sentence in default is of one

year and so, that needs to be reduced to make it six months. In the result, following order is made.

O R D E R

Revision is partly allowed. The judgment and order of J.M.F.C. and also Sessions Court is modified to make the sentence as sentence of imprisonment of one month and the direction to pay compensation of Rs.3,50,000/- (Rupees three lakh fifty thousand). Amount of Rs.50,000/- already deposited is taken in to consideration. But the sentence in default given by the Courts below which is S.I. for one year is reduced to make it as S.I. for six months. This sentence is in addition to substantive sentence of S.I. for one month. The amount deposited is to be given to the complainant.

[T.V. NALAWADE, J.]

ssc/