

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 1 OF 2017

SHRI. SIRAJ A. HAWALDAR, PRESENTLY
IN CENTRAL JAIL COLVALE.,

... Petitioner

Versus

THE MAHILA URAB CO-OP. CREDIT
SOCIETY LTD., REP. BY SHRI. VIVEK
KASHINATH SHIRODKAR.,

... Respondent

Ms. Andrea Fernandes, Advocate for the applicant.

Coram:- C. V. BHADANG, J.

Date:- 27th February, 2017

P.C.

On 05/01/2017, a notice, indicating that the Criminal Revision Application may be heard finally, at the stage of admission, was issued in this case. None appears for the respondent, though served. I have heard the learned Counsel for the applicant and the Criminal Revision Application is being disposed of finally.

2. The applicant, who was an accused in a prosecution under Section 138 of Negotiable Instruments Act, was convicted by the learned Magistrate and sentenced to undergo Simple Imprisonment for a period of one month and to pay compensation of Rs.65,000/- and in default, to further undergo Simple Imprisonment for a period of 7 months.

3. The applicant challenged the said judgment of conviction and sentence before the learned Sessions Judge in Criminal Appeal No.153/2014. The learned Sessions Judge, by the impugned judgment dated 21/11/2016, has dismissed the appeal on account of absence of the appellant and his Counsel.

4. It is a matter of record that the applicant has deposited an amount of Rs.30,000/- before this Court and Rs.21,000/- before the learned Sessions Judge. Thus, out of the total amount of Rs.65,000/- of compensation, the applicant has deposited an amount of Rs.51,000/-. The applicant was arrested on 21/12/2016 in pursuance of a non-bailable warrant issued and has thus, undergone imprisonment for a little over two months. The substantive sentence of imprisonment awarded is only of one month.

5. On behalf of the applicant, reliance is placed on the decision of the Division Bench judgment of this Court in the case of MAHENDRAKUMAR SHANTILAL SHAH VS. STATE OF MAHARASHTRA; [1996 BCI 104] and the decision in the case of JAFAR SHAMSUDDIN MOMIN VS. NIGHOJ GRAMIN BIGARSHETI SAHAKARI PATSANSTHA MARYADIT AND ANOTHER;[2010 BCI 5], in order to submit that the criminal appeal cannot be dismissed on account of non-appearance of the

appellant or his Counsel and has to be decided on merits.

6. The Division Bench of this Court in the case of MAHENDRAKUMAR SHAH (supra), has held that a criminal appeal has to be decided on merits, on perusal of records, even when the appellant or his Counsel does not appear to prosecute the appeal. This Court has placed reliance on the decision of the Supreme Court in the case reported in RAM NARESH YADAV V. STATE OF BIHAR; [AIR 1987 SC 1500].

7. Although it is apparent from the perusal of the roznama that the appellant was not diligent enough to prosecute the appeal with expedition, however, looking to the fact that the applicant has already undergone the imprisonment for little over two months (in the face of substantive sentence of imprisonment of one month) and having paid substantial part of the compensation and further having regard to the fact that the Criminal Appeal has to be decided on merits, I find that the Criminal Revision Application is entitled to succeed.

8. In the result, the following order is passed :

- (i) Criminal Appeal No.153/2014 is restored back to the file of the learned Additional Sessions Judge, for disposal according to law.

- (ii) The applicant shall be released on bail on executing a P.R. Bond in the sum of Rs.15,000/-, with one solvent surety in the like amount.
- (iii) The applicant shall punctually remain present on all the dates fixed in the appeal.
- (iv) Bail bonds to be furnished before the learned Sessions Judge.
- (v) Criminal Revision Application is disposed of in the aforesaid terms.

C. V. BHADANG, J.

SMA