

**IN THE HIGH COURT OF BOMBAY AT GOA****CRIMINAL REVISION APPLICATION NO. 42 OF 2016**

Shri Shodhan A. Naik,  
S/o. Mr. Anant Naik,  
Age 46 years, married, business,  
Resident of H. No.121,  
Pilyan, Dharbandora,  
Sanguem-Goa.

.... Petitioner

V e r s u s

Mr. Basappa S. Kurpi,  
S/o. of Sitappa B. Kurpi,  
Age 58 years, married, service,  
Residing at Goa Engineering  
College Campus,  
Farmaguid, Ponda-Goa.

..... Respondent

Adv. Tari Ulhas Kamlakant for the Petitioner.

Adv. Vivek Angelo Rodrigues for Respondent.

**Coram:- M. S. SONAK, J.**

**Date:- 25th April, 2017.**

Oral Order:

Heard Mr. Tari, the learned counsel for the Petitioner and Mr. V.

Rodrigues, the learned counsel for the respondent.

2. The petitioner, by way of, this criminal revision petition challenges the following orders:

(a) Judgment and order dated 5/10/2009 made by the learned JMFC, Ponda convicting the petitioner for offence under section 138 of the Negotiable

Instruments Act and sentencing him to simple imprisonment for two years, payment of compensation of Rs.75,000/- and in default to undergo further sentence of simple imprisonment for a period of 18 months.

(b) Judgment and order dated 8/12/2009 made by the learned Sessions Judge dismissing the appeal against the aforesaid judgment and order dated 18/9/2009.

3. The revision application was instituted after a considerable delay. However, the petitioner submitted that he may be permitted to file consent terms, so that, all the disputes between the petitioner and the respondent can be suitably settled. On this basis, the application seeking condonation of delay was not even opposed by the respondent. Ultimately, this Court on 26/8/2016 made the following order in CRMA No.170 of 2016 seeking condonation of delay:

**CRIMINAL MISC. APPLICATION NO. 170 OF 2016**  
**IN**  
**STAMP NUMBER MAIN NO. 2589 OF 2016**

|                      |                |
|----------------------|----------------|
| Shri Shodhan A. Naik | ... Applicant  |
| Versus               |                |
| MR. Basappa S. Kurpi | ... Respondent |

Mr. Ulhas Tari, Advocate for the Applicant.

Mr. Vivek Rodrigues, Advocate for the Respondent.

**CORAM:- C. V. BHADANG, J.**

**DATE:- 26<sup>th</sup> AUGUST, 2016.**

P.C:

This is an application for condonation of delay in filing the criminal revision application.

2. The applicant has been convicted for the offence punishable under Section 138 of the Negotiable Instruments Act and has been sentenced to suffer simple imprisonment for two years and to pay compensation of Rs.75,000/- and in default to suffer further simple imprisonment for 18 months. That, has been confirmed in appeal by the learned Sessions Judge by judgment and order dated 08.12.2009. Thus, there is a delay of six years and seven months in filing the criminal revision application.

3. The case made out in the application is that the Counsel appearing for the applicant did not require the applicant to remain present on each date of the hearing of the appeal and the fact of dismissal of the appeal was not informed to the applicant. In short, it is contended that it was on account of the fault of the Counsel of the applicant, that the applicant was unable to take steps to challenge the conviction and sentence within time.

4. Normally, looking to the gross delay in filing the criminal revision application, this Court would have been slow to condone the delay on the grounds as stated. However, the parties have reached amicable settlement and have drawn consent terms for the staggered payment of the total amount. The first installment of Rs.75,000/- is paid by the applicant to the

respondent today. The schedule of subsequent payments is set out in paragraph 2 of the application. The parties have produced the consent terms and are seeking compounding of the offence.

5. Considering the fact that the parties have reached an amicable settlement and the respondent has no objection for condoning the delay, the application is allowed. The delay in filing the criminal revision application is hereby condoned. Let the criminal revision application be registered.

**C. V. BHADANG, J.**

4. The aforesaid order has reference to the consent terms filed on record duly signed by both the parties and their advocates. Paragraph 2 of the consent terms reads thus:

- a. Rs. 75,000/- to be paid today.
- b. Rs.25,000/- to be paid on or before 1.10.2016.
- c. Rs.25,000/- to be paid on or before 1.12.2016.
- d. Rs.25,000/- to be paid on or before 1.3.2017.
- e. Rs.1,00,000/- to be paid on or before 1.6.2017.

5. It is apparent that on the basis of the aforesaid, the petitioner not only secured condonation of delay in instituting the revision petition, but also, the petitioner secured his release from jail. The petitioner, after payment

of Rs.80,000/- in all, has, however, not paid any further amounts to the respondent. The respondent, therefore, took out criminal misc. application no.100/2017 urging for the dismissal of the revision petition.

6. Rather than taking up the Crma No.100 of 2017, it was felt that it would be appropriate if the petitioner's Criminal Revision application is itself taken up for final disposal.

7. Mr. Tari, the learned counsel for the petitioner has quite ably raised the following points in support of the revision application.

a) That the Shiroda Urban Co-operative Credit Society Limited was not at all a Bank and the instrument handed over by the petitioner to the respondent was only a withdrawal slip and not a cheque. On this ground Mr. Tari submits that there was no question of applicability to the provisions of section 138 of the N.I. Act;

b) That in the present case there was total non compliance with the provisions of section 313 of the Cr.P.C. Mr. Tari submits that the incriminating circumstances were never put to the petitioner, but only, some omnibus questions were posed to the petitioner. Mr. Tari submits that such procedure hardly constitutes compliance with section 313 of the Cr.P.C. Mr. Tari submits that the prejudice is inherent and in any case, real prejudice has

occasioned to the petitioner. He submits that for breach of such mandatory provision, the conviction cannot sustain.

(c) Mr. Tari finally submits that the sentence imposed is extremely severe. In particular, Mr. Tari submits that the sentence imposed is the maximum i.e. two years and further, the learned JMFC has imposed in default sentence of 18 months. Mr. Tari submits that excessive sentence is required to be corrected by this Court in exercise of its revisional jurisdiction. Mr. Tari submits that all relevant circumstances which are required to be gone into at the stage of sentence have not at been adverted by the learned JMFC and the learned Sessions Judge. Mr. Tari submits that as of now, the cheque amount has already been paid. Some portion of the sentence has already been undergone by the petitioner. For all these reasons Mr. Tari submits that the sentence is liable to be interfered with.

8. Mr. Rodrigues, the learned counsel for the respondent points out to the conduct of the petitioner and further submits that there is no illegality or perversity in the approach of the learned JMFC or the learned Sessions Judge. For all these reasons Mr. Rodrigues submits that this revision petition may be dismissed.

9. The first contention raised by the Mr. Tari has been adequately

addressed by both the learned JMFC as well as the learned Sessions Judge. Upon due examination of the impugned judgment and orders, there is really no necessity to interfere with the finding that the instrument handed over by the petitioner to the respondent indeed qualifies as a cheque for the purpose of the Negotiable Instruments Act.

10. There is no dispute in this case that the petitioner and the respondent had entered into an agreement by which the petitioner had agreed to sell a small plot of land to the respondent. For the purpose of said sale, the petitioner received from the respondent a sum of Rs.2,25,000/- or thereabouts. Thereafter, the petitioner claims that the petitioner was unable to transfer the plot to the respondent as the petitioner had himself acquired the plot in some Government scheme, which prohibits transfer. Therefore the petitioner agreed to refund to the respondent the amounts received. The cheque in question was issued towards part refund. This position is evident from the material on record. Even otherwise there does not appear to be any serious dispute on this point.

11. Mr. Tari may be right in his submission that the procedure under section 313 of the Cr.P.C could have been better followed. However, Mr. Tari has been unable to establish any prejudice whatsoever to the petitioner

and therefore, there is no case made out to interfere with the conviction on the ground of any alleged infirmity in complying with the section 313 procedure.

12. Mr. Tari, however, is on much better ground in his criticism about the sentence. In particular, there was absolutely no justification imposing in default sentence of 18 months when in fact the main sentence itself was for the maximum period of two years. The in default sentence does appears to be excessive and warrants interference. However, as rightly pointed out by Mr. Tari, the question of in default imprisonment loses significance since the petitioner has already paid the compensation amount of Rs.75,000/- On the aspect of main sentence, however, reduction can be by only six months. This means that the petitioner will have to suffer simple imprisonment for 18 months and not two years as directed in the impugned judgment and orders.

13. In this case , the petitioner, has neither transferred the plot to the respondent nor is he refunding the amounts received from the respondent. The conduct of the petitioner before this Court is also, not all together irrelevant. The petitioner, by filing consent terms persuaded this Court not only to condone the delay but also to release the petitioner on bail.

Thereafter, the petitioner has breached the terms while enjoying his liberty. Mr. Rodrigues has pointed out that the respondents are poor labourers who have neither gained their property nor have been able to secure the refund of the amounts admittedly paid by them to the petitioner.

14. This criminal revision application is therefore partly allowed. The conviction of the petitioner is maintained. The sentence is, however, reduced from two years to 18 months. The bail bonds are canceled and the petitioner is directed to be taken into custody in order to serve the remainder of the sentence.

15. The Registry to take necessary steps so as to ensure that the petitioner is taken in custody and serves the remainder of the sentence.

16. The Criminal Revision application is disposed of in the aforesaid terms.

**M. S. SONAK, J.**

ap/-

