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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR**

CRIMINAL APPLICATION (APL) NO.867 OF 2016

Vyankati s/o Ganganna Aakulwar,
Aged about 48 years,
Occ. Agriculturist, R/o Mandvi,
P.S. Patan, Tah. Zari, District
Yavatmal

..APPLICANT

VERSUS

1. Madhukar s/o Narayanrao Argulwar,
Aged about 72 years, Occ.Agriculturist
and Business,
R/o Patanbori, P.S. Pandharkawada,
Tah. Kelapur, District Yavatmal,

2. State of Maharashtra,
through A.G.P. Pandharkawada,
Tah. Kelapur, District Yavatmal

..RESPONDENTS

Mr A.S. Dhore, Advocate for applicant;
Mr N.H. Joshi, Addl. Public Prosecutor for respondent no.2

CORAM : N.W. SAMBRE, J.

DATE : 15th March, 2017

ORAL ORDER

Learned Ad hoc Additional Sessions Judge-1, Kelapur, by common judgment and order dated 17th October, 2016, passed in Criminal Appeal No.28 of 2009 and Criminal Revision No.83 of 2009, directed the accused to pay fine of Rs.2,75,000/- inclusive of Rs.1,12,500/- already deposited in a prosecution for offence punishable under Section 138 of the Negotiable Instruments Act. The accused was also sentenced to suffer simple imprisonment till rising of the Court.

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2. Against the aforesaid conviction ordered by the learned Ad hoc Additional Sessions Judge, it is informed by the learned Counsel appearing on behalf of the applicant that an appeal is pending before this Court. In addition, a submission is made that by admitting the present application which is moved by the complainant making a grievance that the compensation as ordered should have been double the cheque amount, be tagged with the said appeal.

3. Having heard the learned Counsel appearing on behalf of the applicant – original complainant for some time, it is required to be noted that the dishonoured cheque was for an amount of Rs.2,02,000/- , against which while convicting the accused, penalty of Rs.2,75,000/- was imposed on him. It is then required to be noted that the learned Counsel has urged for imposing double the amount of the cheque amount as compensation and has sought to draw support from the judgment of this Court, in the matter of **Placida Cota vs. National Marketing Co. and another**, reported in **2011 (2) Mh.L.J. 988**. In my opinion, the factual matrix and evidence led in the case in hand was rightly appreciated by the learned Ad hoc Additional Sessions Judge while dealing with the appeal.

4. The proceedings under the Negotiable Instruments Act for prosecution of an accused cannot be termed as proceedings for recovery. In any case, having regard to the nature of object of the statute i.e. Negotiable Instruments Act, the learned Ad hoc Additional Sessions Judge has ordered payment of compensation of Rs.2,75,000/-. The hardship

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suffered by the applicant – original complainant is also taken into account by the learned Ad hoc Additional Sessions Judge while dealing with the issue of award of compensation. The remedy to recover the amount under civil proceedings is already available to the applicant and the amount of compensation is in addition to such remedy to the complainant, i.e. holder of the cheque.

5. In the aforesaid backdrop, in my opinion, the order of award of compensation of Rs.2,75,000/- against cheque amount of Rs.2,02,000/- appears to be reasonable.

6. In view thereof, no case for consideration is made out. Criminal Application, therefore, stands rejected.

(N.W. SAMBRE, J.)

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