

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

**CRIMINAL REVISION APPLICATION NO.272 OF 2018
WITH
CRIMINAL APPLICATION NO.3032 OF 2018**

Tukaram s/o Gambir Mahajan
Age: 78 Yrs., occu. Labour,
R/o Pimparkhed, Tq. Chalisgaon,
District Jalgaon. = **PETITIONER**

VERSUS

The State of Maharashtra = **RESPONDENT**

Monica Dahat, Advocate for Petitioner;
Mr.AS Shinde, APP for Respondent-State

CORAM : P.R.BORA, J.
DATE : 26th November, 2018

ORAL JUDGMENT:

1. With consent of learned counsel and learned APP appearing for the respective parties, criminal revision is finally heard at the stage of admission.

2. The present applicant was prosecuted in Regular Criminal Case No.23/2005 for the offences punishable under Sections 420,419,199,200 read with 34 of Indian Penal Code by the court of JMFC at Erandol. The said court, vide judgment delivered on 23rd June, 2016, convicted the applicant for the offences punishable under Sections 419 as well as

420 read with 34 of IPC and had sentenced the applicant to suffer imprisonment for one year for each of the said offences with fine of Rs.1,000/- for each of the said offences.

3. The applicant filed criminal appeal No.97/2016 against the said order passed by the JMFC court. The learned 1st Ad hoc Additional Sessions Judge, Jalgaon, vide judgment and order passed in the aforesaid criminal appeal on 8th October, 2018, has partly allowed the appeal filed by the applicant. The learned Additional Sessions Judge has held the applicant guilty only for the offence punishable under Section 420 of IPC and has maintained the conviction imposed upon the applicant for the said offence by the trial court. Aggrieved by, the applicant has filed the present revision application.

4. The learned counsel appearing for the applicant, submitted that after pronouncement of the judgment by the Sessions Court on 8th October, 2018, the applicant was taken in custody and since then he is behind the bars. The learned counsel further submitted that after the judgment was delivered in Regular Criminal Case No.23/2005 also

the applicant was sent behind the bars and he remained in jail for the period of about three months till bail was granted to him by the Sessions Court.

5. The learned counsel further submitted that having regard to the age of the revision applicant and further having regard to the fact that the applicant has already undergone the punishment of about 4 ½ months, she is restricting her arguments only to the quantum of punishment. The learned counsel submitted that if the entire evidence is perused, intention on part of the applicant was not in fact to misrepresent or cheat or commit any offence of cheating. It is further contended that surety papers were submitted in his absence and as such, no motive was liable to be attributed on part of the applicant. The learned counsel submitted that however, now, the applicant has decided not to press the other points and request of the applicant is restricted only to reduce the quantum of punishment and to release the applicant on the punishment of the imprisonment already undergone.

6. Shri Shinde, learned APP has opposed for

request so made on behalf of the applicant. The learned APP submitted that the two courts below have concurrently held the applicant guilty for the offence punishable under Section 420 of IPC. It is further contended that it has been beyond doubt proved by the prosecution that the present applicant has committed fraud on the court by submitting the surety papers of a dead person. The learned APP, in the circumstances, has prayed for rejecting the revision application.

7. I have duly considered the submissions made on behalf of the learned counsel appearing for the applicant and learned APP appearing for State. I have also perused the judgments passed by the courts below. It is revealed that the applicant was an accused in Criminal Case No. 1/1996 and since he remained absent during the course of hearing in the said matter, bailable warrant was issued against him and notice to surety was also issued. Thereafter it was revealed that the surety viz. Nazir Ibrahim Musalman had died on 1st October, 2002, i.e. prior to 18.12.2003, the date on which surety papers in his name were presented by the present applicant. In the circumstances,

proceeding came to be initiated against the present applicant.

8. It is now informed that the applicant has been acquitted in the aforesaid criminal case No.1/1996. It has to be stated that the only purpose of taking surety is to get assured the presence of the accused at the time of hearing of the case or in other words for trial. In view of the fact that Criminal Case No.1/1996, wherein the present applicant was alleged to have submitted the surety papers of a dead person, is already culminated into acquittal of the applicant, though the criminal act as has been committed by the applicant remains. I find it worth to consider the request made by the learned counsel for reducing the quantum of punishment.

9. Having regard to the fact that the applicant is now aged about 78 years and the further fact that he has already undergone the sentence for the period of more than 4 ½ months against the punishment of one year, the request so made deserves to be considered. However, balance can be struck by increasing the amount of fine to be imposed on the applicant. In the circumstances,

I deem it appropriate to pass the following order,

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ORDER

i. The Criminal Revision Application is partly allowed;

ii. The order of conviction imposed upon the applicant for the offence punishable under Section 420 of IPC though is maintained, the punishment awarded by the courts below is modified as under, -

. The Revision applicant is sentenced to suffer imprisonment of the period already undergone and to pay fine of Rs.15,000/- (Rupees fifteen thousand), in default to suffer further S.I. For six months.

iv. Pending criminal application, if any, stands disposed of.

(P.R.BORA)
JUDGE

bdv/