

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

CRIMINAL REVISION APPLICATION NO. 252 OF 2016

Sainath Madhav Wagh
Age : 55 years, Occu : Agril,
R/o. Kumbhari, Tq. Kopargaon,
Dist. Ahmednagar

.. Applicant
(Orig. Accused)

Versus

Mahegaon Deshmukh Bigarsheti Patsanstha Ltd.,
Through its Manager Vijay Karbhari Kadam
Age : 45 years, Occu : Service,
R/o. Mahegaon Deshmukh, Tq. Kopargaon,
Dist. Ahmednagar

..Respondent
(Orig. complainant)

...

Shri S.D. Kotkar, Advocate for Applicant
Shri A.S. Gandhi, Advocate for Respondent

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CORAM : PR. BORA, J.
Dated: FEBRUARY 22, 2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and the matter is heard finally by consent of the learned Counsel for the parties.

2. The present respondent had filed a complaint against the present applicant under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'N.I. Act'). It was the contention of the respondent that, the applicant failed in repaying the loan obtained by him from the respondent -

Patsanstha. It was the further contention of the respondent that, the cheque bearing no.964999 for the amount of Rs.35,000/- issued by the applicant towards repayment of the said loan stood dishonoured because of insufficient funds in the accounts of the applicant and hence he was liable to be punished for the offence under Section 138 of the N.I. Act. The learned JMFC Court at Kopargaon, after having considered the evidence brought before it, convicted the applicant for the offence punishable under Section 138 of the N.I. Act and sentenced him to suffer simple imprisonment for two months and also ordered him to pay fine of Rs.36,000/- in default to suffer simple imprisonment for one month. The Court had also directed that the amount of Rs.35,000/- be paid to the complainant Patsanstha out of the fine amount. Against the order passed by the Court of JMFC, the applicant though preferred Criminal Appeal No.19 of 2012 the same has been dismissed by Additional Sessions Judge, Kopargaon vide order passed on 07.11.2016. Aggrieved by, the applicant has preferred the present revision application.

3. It is the contention of the learned Counsel appearing

for the revision applicant that, in fact the cheque which alleged to have been dishonoured and which gave rise for initiation of the complaint under Section 138 of the N.I. Act was issued by the applicant in the year 1999 in respect of the earlier loan transaction. The learned Counsel further submitted that, the said loan has already been repaid by the applicant and in such circumstances, the said cheque should not have been used by the respondent - Patsanstha. The learned Counsel submitted that, the respondent – Patsanstha misused the said cheque, however said aspect has not been appropriately considered by the courts below. Learned Counsel therefore submitted that, the conviction is liable to be set aside and the applicant deserves to be acquitted of the offence charged against him.

4. Shri Amol Gandhi, learned Counsel appearing for respondent - Patsanstha supported the judgments passed by the courts below. Learned Counsel submitted that, the false defence was raised by the present applicant and that has been appropriately rejected by the courts below. The learned counsel further submitted that, the respondent – Patsanstha has duly proved by leading appropriate evidence before the courts below

that the applicant is in arrears of much more amount than the cheque and cheque in question was issued only towards the repayment of the existing loan.

5. After having considered the submissions so made and on perusal of the impugned Judgments passed by the courts below, it does not appear to me that, the courts below have committed any error in holding the present applicant guilty for the offence under Section 138 of the N.I. Act.

6. It was submitted by learned Counsel for the applicant that, the applicant has already deposited the amount of Rs.36,000/- before the JMFC Court on 02.11.2012. Learned Counsel further submits that, the applicant has also undergone near about 21 days imprisonment. Learned Counsel further submits that, the present financial condition of the applicant is precarious. In the circumstances, the alternative prayer was made by learned Counsel to reduce substantive sentence and to release the applicant on the sentence already undergone by maintaining the order of fine.

7. Learned Counsel Shri Gandhi though opposed for such alternative prayer saying that the patsanstha has suffered the loss of interest on the subject amount as well as was required to make expenses in litigation, learned Counsel submitted that, in lie of sentence fine amount be duly increased.

8. After having considered the overall facts in the present matter, it appears to me that, if the applicant has already undergone imprisonment for the period of 21 days, that may be sufficient substantive punishment for him for the offence, which he has committed. Punishment of fine, however, has to be maintained, which the applicant has already complied with by depositing the fine amount in the trial Court. In the circumstances, I am inclined to partly allow the revision application. Hence, the following order.

ORDER

i) The conviction of the applicant for offence under Section 138 of the N.I. Act is maintained and he is sentenced to suffer the imprisonment already undergone with fine of Rs.36,000/-.

ii) The fine amount has already been paid by the applicant before the lower Court. As directed by the courts below, the amount of Rs.35000/- out of the same be paid to the respondent – Patsanstha.

. The Criminal Revision Application thus stands partly allowed in the aforesaid terms.

(PR. BORA, J.)