

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION NO. 18/2018 WITH
CRIMINAL APPLICATION NO.19/2018
IN CRIMINAL REVISION NO. 12/2018

Chandrakant Gulabrao Pendor ..vs.. Kamlakar Rambhau Shedame

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. M. B. Agasti, Advocate for applicant.

CORAM : V.M. DESHPANDE, J.

DATED : FEBRUARY 6, 2018

1. Heard Mr. Agasti, learned counsel for applicant.

2. Criminal Application No.19/2018 is for suspension of substantive jail sentence and Criminal Application No.18/2018 is for grant of bail. The applicant was tried as an accused in Summary Criminal Case No. 191/2010 by Judicial Magistrate First Class, Warora for an offence punishable under Section 138 of the Negotiable Instruments Act. According to the non applicant-complainant, in discharge of legal liability, the applicant issued cheque amounting to Rs.1,00,000/-. However, the said cheque was not honoured by his banker.

3. After a full dress trial, the learned trial Magistrate, on 30.07.2012 recorded the finding of guilt

against the applicant. The applicant was convicted and was directed to suffer simple imprisonment for one month and also was directed to pay Rs.1,00,000/- by way of compensation to the non applicant-complainant.

4. Feeling aggrieved thereby, statutory appeal was carried before the Sessions Court, Warora. The appeal was registered as Criminal Appeal No.28/2012 and the same was decided on 20.12.2017 by which the learned Judge of the appellate Court concurred with the findings recorded by the learned trial Court and dismissed the appeal.

5. According to the submissions made by the learned counsel for the applicant, on the day when the judgment was pronounced by the learned appellate Court, the applicant was not present since he was on pilgrimage. Consequently, on the said day, he was not taken into custody.

6. The applicant, being aggrieved by the judgment and order of conviction passed by the Court below has preferred the present revision. The revision came up for admission along with these applications on 23.01.2018. On that day, it was noticed by this Court that the applicant has not surrendered himself. On that, the learned counsel for the applicant submitted that the applicant will surrender himself before the court of law

and the matter was adjourned to 30.01.2018. On 30.01.2018, since there were no instructions to the learned counsel for the applicant about the surrender, the learned counsel prayed for time and the matter was kept for today.

7. Today, when the question was asked about the surrender, the learned counsel for the applicant submitted that on 01.02.2018, when the applicant had been to the learned Magistrate for surrender, the learned Magistrate has refused to accept his surrender since there is no matter pending before him.

8. The learned counsel for the applicant submitted that the applicant-Chandrakant Gulabrao Pendor is personally present in the Court. He identified the person who is present in the Court as the applicant-Chandrakant Pendor. The applicant is present in the Court and his presence is treated as surrender to the law and it is treated as custody. Consequently, the Court now can proceed with the application for suspension of substantive jail sentence and for grant of bail.

9. The applicant was convicted for the offence punishable under Section 138 of the Negotiable Instruments Act. Punishment is of one month only. Since there is an arguable question, this Court has already issued notices to the non applicant. Further, the learned

counsel for the applicant submitted, on instructions from the applicant, that the applicant is ready to deposit Rs.1,00,000/- within one week from today before this Court.

The statement is accepted as undertaking of the applicant.

10. In view of above, following order is passed.

ORDER

(i) Criminal Application Nos. 18/2018 and 19/2018 are allowed.

(ii) The substantive jail sentence imposed upon the applicant by the learned Judicial Magistrate First Class, Warora on 30.07.2012 in Misc. Criminal Case No. 191/2010 and confirmed by the learned Additional Sessions Judge, Warora on 20.12.2017 in Criminal Appeal No. 28/2012 shall remain suspended during the pendency of the present revision application.

7(iii) Applicant-Chandrakant Gulabrao Pendor be released on bail on he executing PR Bond in the sum of Rs.5,000/- with one solvent surety in the like amount before the learned Judicial Magistrate First Class, Warora within a period of ten days from today.

(iv) The applicant shall deposit Rs.1,00,000/- with the registry of this Court within one week from today.

(v) The applicant shall remain personally present in this Court on every date of hearing of this revision.

(vi) The learned Magistrate, Warora is hereby directed to submit compliance report on execution of the bail bonds before him within two weeks from today.

The applications are disposed of accordingly.

Authenticated copy of the order may be given to the learned counsel for the applicant.

JUDGE

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