

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 52 OF 2005

Mrs. C.P. Vimla Prabhakar Naidu
Age 53 years, Occ. Household
R/o. House No. 239/5, Jyoti Nagar
New Osmanpura, Aurangabad

...Petitioner
(Ori. Accused)

Versus

1. Shri Pramod s/o Purushottamdas Mehta
Age 43 years, Occ. Business as a
partner, R/o. 19, Radhamohan Colony,
Khokadpura, Aurangabad
(Partner of M/s. "OM MARGADARSHAK"
A registered partnership firm, Office
at 1st Floor, Krishna Apartments,
Tilak Road, Abids Hyderabad 500 001
(Andhra Pradesh)

(Ori. Complainant)

2. The State of Maharashtra
Through Public Prosecutor
having its office in High Court
premises Jalna Road,
Aurangabad

...Respondents

.....
Mr. D.R. Bhadekar, advocate for the applicant
Mr. L. D. Vakil, advocate for respondent No.1
Mr. B.V. Virdhe, A.P.P. for respondent No.2
.....

CORAM : V. K. JADHAV, J.
DATED : 21st JANUARY, 2019

ORAL JUDGMENT:-

1. Heard learned counsel for the applicant, learned counsel for respondent No.1 and also learned A.P.P. for the respondent-State.

2. Being aggrieved by the judgment and order of conviction passed by the 9th J.M.F.C. Aurangabad dated 1.4.2004 in S.C.C. No. 2202 of 1997 under Section 138 of Negotiable Instruments Act and sentencing thereby to suffer simple imprisonment for one month and to pay compensation to the complainant of Rs.1,00,000/- in three equal installments within three months and further the said judgment and order is confirmed by the 3rd Additional Sessions Judge, Aurangabad by order dated 15.12.2004 in criminal appeal No. 84 of 2004 by certain modifications to the extent of imprisonment and fine, the applicant-original accused has preferred this criminal revision application. The learned 3rd Additional Sessions Judge, Aurangabad by the aforesaid judgment and order has partly allowed the appeal. The order to the extent of conviction and also the payment of compensation is maintained, however, the sentence awarded by the trial court is modified and directed to pay a fine of Rs.5000/- i/d to suffer S.I. for one month.

3. So far as the judgment and order of conviction passed by the trial court is concerned, the learned Judge of the trial court has not imposed fine and fine is not part of the sentence. The learned Judge of the trial court has sentenced the applicant accused to suffer simple imprisonment for one month and to pay compensation of Rs.1,00,000/- in three equal installments. However, learned 3rd

Additional Sessions Judge, Aurangabad by order dated 15.12.2004 in criminal appeal No. 84 of 2004 maintained the conviction by modifying the sentence and further directed the applicant accused to pay fine of Rs.5000/- i/d to suffer S.I. for one month and maintained the order of compensation.

4. In terms of provisions of Section 357 (3) of Cr.P.C. the court can award the compensation when the imposition of fine does not form a part of the sentence. In the instant case, the learned Additional Sessions Judge has committed error of law in awarding the compensation as well as directing the applicant-accused to pay fine of Rs.5000/-.

5. In terms of provisions of Section 138 of Negotiable Instruments Act 1881, the accused can be punished with imprisonment for a term which may be extended to two years or with fine which may extend to twice the amount of the cheque, or with both. Thus, this fine amount can be extended to at least to cover up the amount of cheque by setting aside the order of compensation. Thus, the order of conviction is maintained with modification in the sentence and thereby directing the applicant original accused to pay fine of Rs.1,05,000/- i/d to suffer S.I. for six months and out of the fine amount, the compensation of Rs.1,00,000/- be paid to the

complainant. The learned counsel for the applicant-accused and also the learned counsel for the respondent-complainant have also accepted the legal position and the aforesaid order of modification. Learned counsel for the applicant-accused, at this stage, submits that the applicant accused has deposited entire amount of compensation of Rs.1,00,000/- and also paid the fine amount of Rs.5000/-. Learned counsel submits that since this Court is inclined to enhance fine amount by modifying the sentence to cover up the cheque amount by setting aside the order of compensation, the said amount of compensation shall be adjusted towards the fine, as per the modification, as aforesaid. In view of the above, criminal revision application deserves to be partly allowed. Hence, the following order:-

O R D E R

- I. Criminal revision application is partly allowed.
- II. The judgment and order of conviction dated 15.12.2004 passed by the 3rd Additional Sessions Judge, Aurangabad in criminal appeal No. 84 of 2004 is maintained. However, the sentence is modified by setting aside the order directing to pay compensation of Rs.1,00,000/- and instead it is directed that the accused to pay a fine of Rs.1,05,000/- i/d to suffer S.I. for

six months and out of the said fine amount, the amount of Rs.1,00,000/- shall be paid to the complainant as compensation.

- III. The applicant accused has deposited the amount of Rs.1,00,000/- towards the compensation and also deposited separately fine amount of Rs.5000/-. The said amount of Rs.1,05,000/- shall be adjusted in the fine amount.
- IV. Criminal revision application is accordingly disposed of. Rule discharged.

(V. K. JADHAV, J.)

rlj/