

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 992 OF 2015

Raviraj Salian]
Age- 41 yrs, Occ- Unemployed]
Bantwala Taluka, Dakshina Kannada]
Residing at Madhava Bhat Compound,]
2nd Floor, Near Pranam Hote, B.C. Road,]
Post, Jodumarga- 574219.] **..... Applicant**

VERSUS

1. The State of Maharashtra]
]]
2. Mr. James Harry Thompson]
Alias J.H. Thompson]
Age not known Occ- Business]
Versatile International Service &]
Contracting, 21-22, Bonanza Arcade]
S.V. Road, Andheri (W)]
Mumbai- 400 0058.] **.... Respondents**

Mr. Vijay Killedar i/b. Mr. Shaikh Abdul Karim Abubaker for applicant.
Mrs. M.R. Tidke, APP for Respondent/State.

CORAM : **S. S. SHINDE J.**
RESERVED ON: **28th June 2019.**
PRONOUNCED ON: **5th July 2019.**

JUDGMENT

1. This application is filed with following substantive prayer:-

“b) The order in para 2 and 3 of the said judgment dated 16/06/2015 be altered and modified and direct the Respondent No. 2 to pay Rs. 40,000/- to the Petitioner and Rs. 3,000/- be paid as cost of proceedings.”

2. The facts leading for filing the present application, in brief, are as under:-

The Respondent No. 2 issued a cheque of Rs. 33,000/- bearing No. 408476 dated 15/04/2012, drawn on IDBI Bank Andheri (W). The applicant deposited the said cheque on 15/04/2012 in IDBI Bank, Andheri (W), with State Bank of Mysore, Dombivli-East Branch. The said cheque was dishonored with remark "Funds insufficient" vide memo dated 20/06/2012. The petitioner sent a legal notice on 02/07/2012 by R.P.A.D. but Respondent No. 2 did not accept the said notice and it was returned with remarks "Unclaimed Return to sender". The Respondent No. 2 failed to pay the cheque amount within 15 days from 03/07/2012. Hence, the applicant filed complaint under section 138 of Negotiable Instruments Act, in the court of JMFC at Kalyan. The Trial Court convicted the Respondent No. 2 and directed to undergo punishment till rising of the court and also directed Respondent No. 2 to pay the fine of Rs. 40,000/- and in default to undergo simple imprisonment for three months and Respondent No. 2 shall pay Rs. 3000/- towards the cost of proceedings.

3. Learned counsel appearing for the applicant submits that learned Magistrate ought to have directed to pay Rs. 40,000/- to the applicant and Rs. 3,000/- as cost. It is submitted that, the learned Magistrate ought to have ordered to give Rs. 40,000/- to the applicant in lieu of monetary loss as

compensation. Respondent No. 2 has deposited the amount of Rs. 43,000/- in the Court at Kalyan. Therefore, Respondent No. 1 be directed to pay amount of Rs. 40,000/- to the applicant.

4. In spite of service none appears for contesting Respondent. Learned APP for Respondent No. 1 submits that, this Court may pass an appropriate order.

5. Heard learned counsel appearing for applicant and learned APP for State. Perused the impugned order and order passed by the 6th JMFC at Kalyan. It is not in dispute that the complainant paid the sum of Rs. 30,000/- in cash to the accused on 13th October 2011 and accused issued receipt for the same. In order to repay the aforesaid amount, Respondent no. 2 appears to have issued cheque.

6. It further appears that, while considering the defence of Respondent No. 1 during trial, the Court of Judicial Magistrate First Class, 6th Court Kalyan, (hereinafter referred to as “the said Court”), held that, defence raised by the accused that disputed cheque was issued as a security to Mr. Sudhakar on behalf of Mr. Ajit who had paid amount to the complainant to pay it to Versatile International Service for securing job for the complainant,

has not been accepted by the said Court. It is observed by the said court that the disputed cheque was issued only for the discharge of legal liability and not for the security. It further appears that, the learned Magistrate convicted the accused no. 2 James Harry Thompson for the offences punishable under section 138 of the Negotiable Instruments Act vide section 255 (2) Cr.P.C. and ordered to undergo imprisonment till rising of the Court. Respondent No. 2 was directed to pay fine of Rs. 40,000/- (in words Forty Thousand rupees only) and in default to undergo simple imprisonment for three months. It was further directed that the accused shall pay Rs. 3,000/- to the complainant towards cost of proceeding under section 359 Cr.P.C. and in default suffer to simple imprisonment for fifteen days.

7. The present applicant filed the application before the said Court for allowing him to withdraw the money deposited by the accused, however, said application was disposed of with an observation that, already fine amount is credited to the Government treasury and hence it cannot be given to the complainant.

8. It appears that, applicant approached the Sessions Court, by way of filing Revision, however, the Sessions Court held that revision is not maintainable.

Admittedly, Respondent No. 2 issued cheque of Rs. 33,000/- bearing No. 408476 dated 15/04/2012 drawn on IDBI Bank Andheri (W) in favour of the applicant. The said cheque was deposited by the applicant in his account, however same was dishonored with remark "Funds Insufficient". The Magistrate has rightly convicted the Respondent No. 2, however, the said Court ought to have ordered to refund the said amount to the applicant. Importantly it needs to be noted that the Trial Court recorded the finding that, disputed cheque was issued by the accused not as a security, but for the discharge of legal liability. In that view of the matter, the learned Magistrate ought to have ordered to repay the said amount to the applicant. Therefore, in the peculiar facts and circumstances of the present case and keeping in view the fact that, at the relevant time the applicant was unemployed youth in desperate need of job, and he had given Rs. 33,000/- to Respondent No. 2, the money deposited with the Registry of concerned Court by Respondent No. 2 should have been given to the applicant. In that view of the matter, the order of the Magistrate to the extent of treating Rs. 40,000/- as fine amount stands modified, and Rs. 40,000/- be treated as compensation to be paid to the applicant.

9. The Court of 6th JMFC, Kalyan shall ensure that aforesaid amount credited to the Government shall be brought back from the treasury of the

Government, and thereafter same be credited in the account of the Nazir office of 6th JMFC, Kalyan and thereafter 6th JMFC, Kalyan shall ensure that the said money is credited in the account of the applicant. The entire exercise shall be done as expeditiously as possible, however, within four months from the receipt of this order.

10. The application is allowed to above extent and stands disposed of accordingly.

[S.S. SHINDE, J.]