

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.120 OF 2020

Carnet Elias Fernandes	...	Petitioner
Versus		
The State of Maharashtra & Anr.	...	Respondents

• • • • •

Mr.K.T.Thomas with Ms.Riddhi Panchal and Mr.Mayank Mishra,
Advocate for the Petitioner.

Mr.S.V.Gavand, the Additional Public Prosecutor for the Respondent No.1/State.

Mr.Lalit Katariya with Ms.Benedicta Lobo i/b. Katariya & Associates, Advocate for the Respondent No.2.

• • • •

CORAM : A.M.BADAR J.

DATED : 20th FEBRUARY 2020.

P.C. :

1 Heard the learned Counsel appearing for the petitioner
at sufficient length of time. By placing reliance on Judgment in
the matter of ***D. Purushotama Reddy & Anr. Versus K. Sateesh***¹, the
learned Counsel for the petitioner argued that the entire assets of
the petitioner are taken by the respondent No.2 and virtually
entire recovery has been effected. He submits that earlier petition

1 (2008) 8 Supreme Court Cases 505.

filed by the petitioner was allowed to be withdrawn for making appropriate application for modification of the Order by the learned Appellate Court and, therefore, the impugned Order is *per se* illegal.

2 I have considered the submissions so advanced and also perused the material placed on record by the petitioner.

3 The petitioner herein was an accused in a complaint case for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 filed by respondent No.1 herein. That complaint came to be decided on 25/03/2019 and operative part of that judgment and Order reads thus :

“1. The accused is convicted for the offence punishable under Section 138 of the Negotiable Instruments Act vide Section 255(2) of the Code of Criminal Procedure.

2) The accused is sentenced to suffer Simple Imprisonment for 02 (Two) years for the offence of Section 138 of the Negotiable Instruments Act.

3) The amount of double the cheque of Rs.6,81,16,846/-(Rupees Six Crores Eighty One Lacs Sixteen Thousand Eight Hundred and Forty Six only) along with simple interest thereon at 9% per annum as the reasonable quantum of loss from the date of complaint till its realization, if recovered same be paid to the complainant as compensation vide Section 357(3) of the Code of Criminal Procedure and in default to suffer simple imprisonment for (03) three months.

4) The accused to surrender his bail bonds.

5) Issue warrant of arrest of the accused for forwarding him to the jail for execution abovesaid imprisonment vide Sec.418(2) of The Code of Criminal Procedure.”

4 Dissatisfied with the conviction and the resultant sentence as well as the award of compensation, the petitioner herein/original accused preferred an appeal before the learned Sessions Judge, Mumbai. In that Appeal, on 21/05/2019, the learned Additional Sessions Judge was pleased to direct the petitioner herein/original accused to deposit 20% amount of the

compensation amount imposed by the learned trial Court within a period of one month from the passing of the said Order.

5 The petitioner, it seems, has challenged the said Order dated 21/05/2019 directing him to deposit 20% of the amount of compensation by filing a Writ Petition bearing No.4155 of 2019. On 13th November 2019, the said petition came to be dismissed with the following Order :

“Learned Counsel for the petitioner seeks leave to withdraw the petition. The petition is accordingly dismissed as withdrawn.”

6 Subsequent thereto, the petitioner herein/original accused filed an application for modification of the Order dated 21/05/2019 directing him to deposit 20% of the amount of compensation. That application came to be registered as Criminal Miscellaneous Application No.2944 of 2019. By the impugned Order dated 13/12/2019, the said application came to be rejected. The reason given for rejection of the said application by the learned Appellate Court is to the effect that the Appellate Court

has no inherent power to review its own Order. It is observed by the learned Appellate Court that except for correcting clerical and arithmetical errors, it cannot review or modify its own Order.

7 No infirmity can be found in the impugned Order passed by the learned Appellate Court on 13/12/2019. The Order dated 21/05/2019 directing deposit of the 20% of the amount of compensation is based on the amended provision of the Negotiable Instruments Act, 1881 as well as judgment of the Honourable Apex Court in the matter of *Surinder Singh Deshwal @ Col. S.S.Deshwal Versus Virender Gandhi*². It is confirmed by this Court in Writ Petition No.4155 of 2019 decided on 13th November 2019. It is not seen from the Order dated 13th November 2019 that any opportunity was granted to the petitioner herein/original accused to approach the learned Sessions Judge for seeking modification of the Order dated 21/05/2019 and rightly so because the learned Additional Sessions Judge dealing with matter is not having any inherent power to review its own Order.

2 2019 Cr.L.J. 3507.

8 In this view of the matter, Judgment in the matter of *D. Purushotama Reddy & Anr. (supra)* is of no avail to the petitioner. The petition is devoid of merit and the same is dismissed.

(A.M.BADAR, J.)

Raju D.
Gaikwad

Digitally signed
by Raju D.
Gaikwad
Date: 2020.02.21
14:11:34 +0530