

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

949 CRIMINAL WRIT PETITION NO.1411 OF 2020

Vardhman Steel
E-12, MIDC, Waluj, Aurangabad
Through its G.P.A. Holder,
Jayesh Kushalchand Parekh
Age 52 years, Occu: Service
R/o Vardhman Steels,
E-12, MIDC Waluj,
Opp. Ranjangaon Phata Kaman,
Aurangabad.

.. PETITIONER
(Orig.Complainant)

VERSUS

Sai Engineering
Mr.Mahadeo Thorat,
Proprietor : Sai Engineering,
Age Major, Occu: Business,
R/o Gut No.34-36, Plot No.29/1
Behind Savera Auto, Ranjangaon,
MIDC, Waluj, Aurangabad
and R/o. Mr.Mahadev Thorat
Sai Engineering, Opp.H.PGas
Godown, Gut No.67, Plot No.128,
MIDC, Waluj, Aurangabad

.. RESPONDENT
(Orig.Accused)

....

Advocate Mr.M.V.Ghatge for the petitioner
Advocate Mr.Waseem Khan h/f Advocate Mr.R.V.Gore for respondent.

...

CORAM : MANGESH S. PATIL, J.
DATE : 04.03.2021

ORAL JUDGMENT :-

Heard.

2] Rule. Rule is made returnable forthwith. With the consent of both

the sides, the matter heard finally at the stage of admission.

3] Though the matter has been styled as a Writ Petition, in substance, the petitioner who happens to be the original complainant in a proceeding under Section 138 of the Negotiable Instruments Act, is soliciting a further order directing the amount out of fine to be paid to him under Section 357(2) of the Cr.P.C.

4] It transpires that the original complainant had preferred an Appeal against acquittal of the respondent of the offence punishable under Section 138 of the Negotiable Instruments Act. This Court by judgment and order dated 3/9/2019 in Criminal Appeal No.263/2019 allowed the appeal, quashed and set aside the order of acquittal and convicted the respondent. The operative order reads thus :

"I] The judgment and order passed by the Judicial Magistrate First Class (Court No.13), Aurangabad, on 07/02/2018, in SCC No.3245 of 2016, is quashed and set aside.

II] The respondent is held guilty and convicted for the offence punishable under Section 138 of the N.I.Act, and is sentenced to pay fine of Rs.2,00,000/-, in default, to suffer simple imprisonment for six months.

III] The respondent to deposit the amount of fine in the Trial Court, within eight weeks from the date of this order. If he fails to deposit the amount of fine within the stipulated period, the Trial Court shall ensure that the respondent undergoes the default sentence.

IV] Appeal stands allowed in the aforesaid terms."

5] When the original complainant approached the trial Court lodging the claim for compensation under Section 357(2) of the Cr.P.C., the learned Magistrate observed that there is no such direction by this Court and refused to pay him anything and that is how Writ Petition has been preferred. On the last date, to a specific query put to the learned advocate for the petitioner a further prayer is added as prayer Clause BA in the Petition soliciting a direction for payment of compensation out of the fine amount.

6] It is quite apparent that erroneously, inspite of imposition of fine amount of Rs.2 lakh no further order directing the compensation to be paid to the original complainant as is contemplated under Section 357(2) of the Cr.P.C. was passed.

7] Taking into account the whole aim and object underlying Chapter XII of the Negotiable Instruments Act, original complainant deserves to be paid compensation by resorting to the provisions of Section 357 (2) of Cr.P.C.

8] The Writ Petition is allowed in terms of prayer clause BA. The Rule is accordingly made absolute.

[MANGESH S. PATIL, J.]