IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO.12 OF 2019
WITH
CRIMINAL MISCELLANEOUS APPLICATION NO.81/2019
IN
CRIMINAL REVISION APPLICATION NO.12 OF 2019

Vishwas Santosh Malvankar ... Applicant

Versus

The Madgaum Urban Co-op Bank
Limited and another ... Respondents

Mr. S. Mahambrey, Advocate for the Applicant.
Mr. P. Kakodkar, Advocate for the Respondent-Bank.
Mr. S. Bhobe, Public Prosecutor for the State.

CORAM : M. S. SONAK, J.
DATE : 17th February, 2021

P.C.

Heard Mr. Mahambrey for the Applicant, Mr. Kakodkar for the Respondent-Bank and Mr. S. Bhobe, learned Public Prosecutor for the State.

2. This revision assails the judgments and orders made by the Judicial Magistrate, First Class at Margao and Sessions Court at Margao convicting the applicant under Section 138 of the Negotiable Instruments Act, 1881.

3. Mr. Mahambrey, the learned counsel for the applicant submits that the two judgments and orders convicting the applicant suffer from illegalities. He submits that in any case the entire cheque amount has already been deposited in this Court or in the Sessions Court and the applicant, can have no objection to the withdrawal of the same by the bank. Mr. Mahambrey therefore submits that a lenient view may be taken in the matter and the offence may be permitted to be compounded.

4. Mr. Kakodkar points out that the cheque amount may have been deposited in the courts but the same is yet to be received by the bank. Further, he points out that the interest @ 14% p.a. as well as the compensation of ₹40,000/- has been awarded and the same till this date has not been paid by the applicant to the bank or deposited in the court. He points out that there are concurrent findings of fact and since there is no perversity pointed out this revision ought to be dismissed.

5. The Judicial Magistrate, First Class in this case, has imposed the following sentence on the applicant vide judgment and order dated 04.01.2018:-

> *(i) The Accused is sentenced to undergo simple imprisonment for a period of two years and shall pay compensation to the Complainant amounting to ₹4,51,500/- plus the interest at the rate of 14% p.a. starting from 30.04.2014, till full and final payment.*

(ii) The Accused is directed to pay the Complainant, towards this three and a half year long litigation, a lumpsum compensation of ₹40,000/-, towards litigation costs and out of pocket expenses, which such litigations bring about.

(iii) Default in paying the compensation amount or any part of it, will result in the Accused suffering simple imprisonment for a further period of six months.

(iv) It is clarified that all the compensation amounts, when added together, cannot exceed double the cheque amount.

6. The Sessions Judge, vide order dated 07.02.2019 has dismissed the appeal.

7. There are concurrent findings of fact and as was correctly pointed out by Mr. Kakodkar, no perversity or even any error of law is demonstrated. Hence, there is no case made out to interfere with the conviction of the applicant in the exercise of revisional jurisdiction.

8. However, when it comes to sentencing, some interference is necessary particularly because by now the applicant has deposited the cheque amount either in this court or before the Sessions Court. The cheque amount in this case was ₹4,51,550/-. Since Mr. Kakodkar points out that this amount has not actually been received by the bank, liberty is now granted to the bank to withdraw the amounts deposited by the applicant either with this Court or before

the Sessions Court, together with interest, if any, that may have accrued on such amounts. The Registry to facilitate such withdrawal by the bank, upon the bank making a formal application in this regard.

9. It is true that till date the applicant has not deposited the interest amount or the compensation amount and the same is outstanding. This Court might have been inclined to grant to the applicant some additional time to make such payments; however, record indicates that despite the ground of more than sufficient time, neither has this amount been paid nor any proposal put forth for payment of this amount even today. Mr. Mahambrey states that he is unable to make any statement on the aspect of further payments.

10. However, taking into consideration the fact that the cheque amount has been deposited and now liberty has been granted to the bank to withdraw the same. The sentence of Simple Imprisonment for two years is reduced to sentence of Simple Imprisonment for 30 days. However, the default sentence for failure to pay lumpsum compensation of ₹40,000/- is hereby set aside.

11. The Revision is partly allowed to the aforesaid extent. There shall be no order as to costs.

12. The applicant to surrender before the competent Court to serve out the sentence now substituted, within a period of 15 days from today.

13. In view of this order, nothing survives in the Criminal Miscellaneous Application No.81/2019 and hence the same is also disposed of.

M. S. SONAK, J.

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