

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

CRIMINAL REVISION APPLICATION NO.424 OF 2004

Rajkumar s/o Gopaldas Kukreja,
Age 36 years, Occu. Business,
r/o Dondaicha, Tq. Shindkheda,
District Dhule.

...Petitioner

Versus

1. Suresh s/o Elji Patil.
Age 42 years, Occ. Business,
r/o Gurudatta Metal,
Shivaji Road, Dondaicha,
Tq. Shindkheda, Dist. Dhule.

2. The State of Maharashtra,
Copy to be served on Public
Prosecutor, High Court of Bombay,
Bench at Aurangabad.

...Respondents

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Advocate for Applicant : Mr. A.R. Syed h/f Mr. S P Brahme

APP for Respondent/State : Mr. A.A. Jagatkar

Advocate for Respondent No.1 : Mr. Ashutosh C. Sisodiya h/f Mr. A.B.
Girase

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CORAM : S.G. MEHARE, J.

DATED : 23rd NOVEMBER, 2022

ORAL JUDGMENT :-

1. Heard learned counsel for the applicant and learned counsel for the respondent at length.
2. The Complainant, dissatisfied with the punishment, has impugned the order passed by the learned Judicial Magistrate First Class, Dondaicha, in STC No.83 of 2003 (Old STCC No.1250 of 1998) dated 04.08.2004.

3. Learned counsel for the applicant would submit that the accused was a businessman. He has a business selling utensils and a seasonal business selling crackers. The petitioner/complainant has proved the legally enforceable debt. However, while imposing the sentence, the learned Magistrate has imposed disproportionate imprisonment till the rising of the Court and a fine of Rs.1,000/- only against the cheque amount of Rs.10,000/-. He would argue that the respondent had sufficient income. He was very well able to pay at least Rs.10,000/-. He also argued that the Court did not give proper reasons for such leniency, imposing a sentence and penalty less than provided in the law. Referring to Section 138 of the Negotiable Instruments Act, he would argue that the proceeding under Section 138 of the Negotiable Instruments Act is quasi-civil and quasi-criminal. The said Act guarantees the debt. The order granting compensation under the said act has the force of the money decree. The Court has the power to impose a fine to the extent, twice the amount of the cheque. However, the learned Magistrate ignored the substantial provisions. The complainant was pursuing his complaint for so many years. He has spent a huge amount on litigation, lawyer's fee and suffered a loss of his business. The learned Magistrate ignored the pragmatic aspects of the losses suffered by the complainant while imposing the sentence and fine. The applicant/complainant was at least entitled to receive the compensation to the extent of the cheque

amount. Since the imprisonment and fine imposed upon the accused by the learned Magistrate is disproportionate, it may kindly be modified.

4. Per contra, learned counsel for the respondent has vehemently argued that imposing the sentence and fine is the discretion of the Court. The learned Magistrate had an occasion to note the demeanor of the parties. The Court heard the counsel for the accused on sentence, but his submissions were not opposed. Therefore, the imprisonment and fine imposed by the learned Magistrate are proportionate and upon the facts of the case. There is no ground to interfere with the impugned order.

5. In Modi Ram and Lala V State of Madhya Pradesh AIR, 1972 SC 2438, the Hon'ble Supreme Court held that, in considering the adequacy of the sentence, which should neither be too severe nor too lenient, the Court has, therefore, to keep in mind the motive and magnitude of the offence, the circumstances in which it was committed, and the age and character (including his antecedents) and station in life of the offender.

6. No doubt, sentencing is a matter of judicial discretion. However, while imposing the sentence, the settled principle of law cannot be brushed aside. The punishment should conform and consistent with the nature of the crime and the way in which it was committed. While imposing the minimum corporal imprisonment,

there should have the special circumstances. The responsibility of the accused to maintain the family and his station in society may be considered for leniency.

7. Before imposing the sentence, the respondent was heard in person. He had stated before the Court that he was doing the business of milk and was the only breadwinner of his family, and he has to maintain his small children. His counsel submitted that the accused was not in a position to pay a fine as per law, as he had a meagre income. In his statement under Section 313 of the Criminal Procedure Code, he had admitted that he was the retailer and the complainant was the wholesaler of the crackers.

8. Considering the facts as regards the business of the accused came on record, it cannot be accepted that the accused was not in a position to pay the fine up to double the amount of the cheque as prescribed under Section 138 of the Negotiable Instruments Act. Considering the financial condition and the station of the accused in society, the Court is of the view that the leniency shown by the learned Magistrate imposing a meagre fine is disproportionate and against the principle of law imposing penalty. As far as the imprisonment till the rising of the Court is concerned, that may be considered in view of the responsibilities of the applicant. Hence, it does not warrant interference. However, the petition is liable to be

partly allowed by enhancing the fine amount and compensation to the complainant as prescribed under law. Hence, the following order :

ORDER

- I) Application is partly allowed.
- II) The order imposing S.I. till rising of the Court passed by the learned Judicial Magistrate First Class, Dondaicha, dated 04.08.2004, is confirmed.
- III) The order imposing a fine of Rs.1,000/- and to suffer S.I. for its default is set aside.
- IV) The accused is sentenced to pay a fine of Rs.15,000/- in default to suffer S.I. for one month.
- V) Out of the fine amount Rs.14,000/- be paid to the complainant as compensation within two months from today.
- VI) If the accused/respondent fails to pay the amount, the applicant/complainant is at liberty to file appropriate proceedings.
- VII) Record and proceedings be returned to the Trial Court.
- VIII) Rule is made absolute in the above terms.

(S.G. MEHARE, J.)