

3. The petitioner was also tried for offence punishable under Section 138 of Negotiable Instruments Act vide Summary Criminal Case No.921 of 2015. He pleaded guilty and vide judgment and order dated 22.03.2021, the petitioner was convicted and sentenced to suffer imprisonment for 18 months and also directed to pay compensation of Rs.9,50,000/- and in default of payment of compensation, he was further sentenced to suffer simple imprisonment of six months. The trial Court gave set off to the petitioner from 8th March, 2021.

4. The petitioner preferred an application before the Court of Additional Chief Metropolitan Magistrate, Kolhapur in SCC No.921 of 2015 for set off. The said application was rejected by order dated 20-07-2021.

5. Learned Advocate for the Petitioner submitted that, in Summary Criminal Case No.921 of 2015, non-bailable warrant was issued on 7th December, 2019 which was executed upon him on 18th December, 2019. The petitioner was in custody in RCC No.411 of 2020 (C.R.No.457 of 2019). He was granted bail in that case and Form No.46 issued by Court of Additional Chief Judicial Magistrate, Pune indicated that petitioner shall be discharged from custody in that case on 24-02-2020. Thus, the petitioner was in exclusive

custody in RCC No.921 of 2015 from 24-02-2020 and thus entitled for set off since then. The petitioner was entitled for set off from 24.02.2020 and not from 08.03.2021. It is further submitted that the petitioner was produced before the Court of Chief Judicial Magistrate, Kolhapur dated 08.03.2021 after execution of warrant and the Court thereafter directed him to be produced on 15.03.2021 and thereafter on 22.03.2021. It is submitted that, while issuing the non-bailable warrant on 7th December, 2019, the learned Magistrate was aware that the petitioner is already in custody in another case. Although, he was produced before the Court of learned Chief Judicial Magistrate, Kolhapur, 08.03.2021, the said date cannot be considered on the date of his being custody since the non-bailable warrant was executed against him on 18.12.2019.

6. Learned APP submitted that, Section 428 of Cr.P.C. is applicable for grant of set off. He also submitted that Form No. 46 annexed at Exhibit – A indicate that the warrant of discharging the person from jail was executed on 24th February, 2020. The non-bailable warrant was executed against the petitioner on 18th December, 2019.

7. From the aforesaid factual aspects and documents annexed to the petition it is clear that petitioner is entitled for set off in RCC No.921 of 2015 from 24-02-2020.

ORDER

- i.** Writ Petition No.4658 of 2021 is allowed;
- ii.** Order dated 20.07.2021 passed by learned Additional Chief Judicial Magistrate, Kolhapur below Exhibit – 47 in SCC No.921 of 2015 is set aside.
- iii.** Judgment and order dated 22.03.2021 passed by learned Additional Chief Judicial Magistrate, Kolhapur in Summary Criminal Case No.921 of 2015 is modified to the extent that set off is granted to petitioner under Section 428 of Cr.P.C. for a period from 24th February, 2020.
- iv.** Petitioner be released from jail custody in Summary Criminal Case No.921 of 2015 forthwith unless required in any other case.
- v.** Writ Petition stands disposed off accordingly.
- vi.** The Jail Authority shall act on authenticated copy of this order.

(PRAKASH D. NAIK, J.)