

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL REVISION APPLICATION NO. 17 OF 2022

APPLICANT: Shri Vinod Uttamrao Warkad,
Aged about 56 years, Occu: Service,
R/o Samatha Nagar, Murmadi (Sawari),
Tah. Lakhani, Dist. Akola.

..V E R S U S..

RESPONDENTS 1. Prakash Marotrao Kohle,
Aged about 68 years, Occu: Prop.
R/o-M/s Online Lottery, Gandhi Chowk,
Mahal Road, Bhandara, District Bhandara.

2. The State of Maharashtra, thr. Additional
Public Prosecutor.

Mr G.I. Dipwani, counsel for the applicant.
Mr A.V. Muley, counsel for the respondent No.1.
Ms Shamsi Haider, APP for the respondent No.2/State.

CORAM : ANIL S. KILOR, J.
DATE : 11th November, 2022

ORAL JUDGMENT :

1. Heard.
2. **Rule.** Rule is made returnable forthwith. Heard finally
with the consent of both the parties.
3. This revision application takes exception to the
judgment and order dated 13/01/2022, passed by the learned

Additional Sessions Judge, Bhandara in Criminal Appeal No. 11/2020, dismissing the appeal and confirming the judgment and order dated 31/08/2019, passed by the Judicial Magistrate First Class, Bhandara convicting the applicant for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and sentenced to suffer simple imprisonment for a period of one month and further directed to pay Rs. 1,50,000/- as compensation and in default to suffer simple imprisonment for one month.

4. I have heard the learned counsel for respective parties.

5. The learned counsel for the applicant submits that, he has already deposited Rs. 1,50,000/- as directed by the learned trial Court and had also undergone imprisonment for the period of 18 days out of one month.

6. It is submitted that, both the Courts have not considered the case of the applicant in the right perspective while sentencing him to undergo imprisonment for one month.

7. It is submitted that, as the trial Court has directed to pay Rs.1,50,000/- as compensation, imposing the sentence of one month is disproportionate and cannot be termed as a reasonable sentence. He submits that, on the point of sentence, this Court may

interfere with the judgment of the learned Appellate Court.

8. Shri A.V. Muley, learned counsel for respondent No.1 supports the impugned judgment and orders of both the Courts below and prays for dismissal of the present revision application.

9. Ms. Shamsi Haider, learned APP reiterates the submission of respondent No.1.

10. In the light of the rival submissions, I have perused the judgment and orders of both the Courts below and revision application.

11. In this case, as directed by the learned trial Court, the applicant has already deposited of Rs. 1,50,000/- before the learned trial Court, as compensation.

12. As far as the quantification of the quantum of sentence is concerned, I am of the opinion that some leniency needs to be shown, for the reason that, there is no finding recorded by both the Courts below that default in payment was intentional. In the circumstances, I am of the opinion that as he has already undergone 18 days imprisonment which is reasonable in the facts and circumstances of the case in hand. Accordingly, I pass the following order:

- (a) The criminal revision application is partly **allowed**.
- (b) The judgment and order dated 31/08/2019 is modified to the extent of clause (1) of the operative part and thereby the applicant is sentenced to suffer simple imprisonment for the period of 18 days.
- (c) The respondent No.1 is permitted to withdraw the amount deposited by the applicant along with interest, if any, accrued thereon.

The revision application is **disposed of** accordingly.

[ANIL S. KILOR, J.]

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