

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

CRIMINAL REVISION APPLICATION NO.179 OF 2022

Prashant S/o Chhaganrao Gadekar,
Age : 30 yrs, Occu : Pvt Service,
R/o Shrinivas Building, Shivaji Colony,
Near Kranti Chowk Police Station, Samata Nagar,
Tq. & Dist. Aurangabad.

..Applicant

Versus

1. The State of Maharashtra
to be served through GP Office
High Court bench at Aurangabad.

2. Bhausaheb S/o Bhajangrao Dhavale,
Age : 62 yrs, Occu : Agriculture,
R/o Flat No.14, Shriganesh Plaza,
Chhatrapati Nagar, Satara Parisar,
Tq. & Dist. Aurangabad.

..Respondents

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Mr. Rajendra Deshmukh, Senior Counsel a/w. Mr. Vishal Chavan i/b
Mr. Balraj Pande, Advocate for the applicant.

Mr. Y.G. Gujarati, APP for respondent no.1/State.

Mr. A.B. Jagtap, Advocate for respondent no.2.

**WITH
CRIMINAL REVISION APPLICATION NO.247 OF 2022**

Bhausaheb S/o Bhajangrao Dhavale,
Age : 62 yrs, Occu : Nil,
R/o Flat No.14, Shriganesh Plaza,
Chhatrapati Nagar, Satara Parisar,
Tq. & Dist. Aurangabad.

..Applicant

Versus

1. Prashant S/o Chhaganrao Gadekar,
Age : 33 yrs, Occu : Business,
R/o Shrinivas Building, Shivaji Colony,
Near Kranti Chowk Police Station, Samata Nagar,
Tq. & Dist. Aurangabad.

(2)

2. The State of Maharashtra
to be served through GP Office
High Court bench at Aurangabad. ..Respondents

...

Mr. A.B. Jagtap, Advocate for the applicant.

Mr. Y.G. Gujarati, APP for respondent no.2/State.

Mr. Rajendra Deshmukh, Senior Counsel a/w. Mr. Vishal Chavan i/b
Mr. Balraj Pande, Advocate for respondent no.1.

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CORAM : S.G. MEHARE, J.

DATED : AUGUST 08, 2023

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. With the consent of the parties, the matter is heard finally at the admission stage.

2. Both these revisions arise from the judgment of the learned Judicial Magistrate First Class, Court No.6, Aurangabad, passed in S.C.C. No.1216 of 2017 dated 08.02.2019. The learned Magistrate convicted the accused under Section 138 of the Negotiable Instruments Act, sentenced him to suffer R.I. for one year, and was directed to pay the compensation of seven lacs. The complainant, as well as the accused, had impugned the said judgment before the learned Additional Sessions Judge, Aurangabad. The criminal appeal preferred by the complainant for enhancement of the compensation was registered as Criminal Appeal No.57 of 2019, and the appeal preferred by the accused was registered as Criminal Appeal No.37 of 2019. Both appeals were decided on 13.06.2022.

3. The learned Additional Sessions Judge was pleased to reduce the corporal sentence from one year to nine months. However, he denied the prayer of the complainant to enhance the compensation. Hence, the complainant and the accused are before the Court under Section 397 r/w 401 of the Criminal Procedure Code.

4. Heard the respective counsels at length.

5. The complainant has a case he and the complainant were familiar. He had invested the money with the accused as he was developing his plot through the developer for the construction of the apartment. The accused won his confidence. Hence, he had paid Rs.6,50,000/- to the accused from time to time. However, the accused failed to start the project. Therefore on demand, the accused had issued three cheques of different amounts and dates towards legally enforceable debt. The accused failed to arrange with the Bank to honour the cheques. The cheques were dishonoured for the reason 'stop payment'. Hence after issuing the statutory notice, a complaint under Section 138 of Negotiable Instruments Act was filed.

6. The accused came with a defence, as appeared from the cross-examination of the witnesses, that he never issued the cheques in dispute to the complainant. The cheques in the disputes were lost. Hence, he stopped the payment by writing a letter to the Bank. However, he did not deny the signature over the cheques in dispute. He further came up with a case that since he did not completely fill

up the cheques, it was a sort of material alteration in the negotiable instrument. Therefore, the complaint under Section 138 of the Negotiable Instruments Act would not stand.

7. Learned senior counsel for the accused read the judgments and some portions of the depositions of the complainant and referred to the complaints lodged to the police, which were admittedly addressed by the father of the applicant. He has vehemently argued that the defence of the accused has not been correctly appreciated. The complainant did not discharge the burden that the cheques were issued towards legally enforceable debt. He would argue that snatching and losing are synonymous. Hence, bare using the word snatching would not be sufficient to disbelieve the reasons given in a letter to the Bank for stopping payment. Hence, the impugned judgments and orders are illegal, erroneous and incorrect.

8. Per contra, learned counsel for the complainant would argue that the accused never denied his signature over the cheques in dispute. Hence, the presumption under Sections 118 and 139 of the Negotiable Instruments Act was attracted. Delivering the blank signed cheques does not absolve the accused from liability. His defence was not consistent. On the one hand, he came with a defence that the accused had snatched the cheques. However, while addressing the letter to the Bank, he mentioned that the cheques in dispute were lost. Therefore, both Courts correctly believed the complainant and

held the accused guilty under Section 138 of the Negotiable Instruments Act. He would submit that the complainant had paid his entire retiral money to the applicant in 2016. Since 2016, the complainant has been running from pillar to pole to recover his money, but the accused did not respond. He enjoyed money free from interest. Hence, the compensation should have been granted to him double the cheque amount. The learned Magistrate and the Additional Sessions Judge did not exercise their discretion properly. The reasons assigned for reducing the corporal sentence are also against the law. Hence, his revision is liable to be allowed, and the revision filed by the accused is liable to be dismissed.

9. Two concurrent judgments against the accused held him guilty of the offence punishable under Section 138 of the Negotiable Instruments Act. After having gone through the judgments, since the accused was not consistent about stopping the payment, both Courts have correctly disbelieved him. The reports which were filed before the police authorities were also not consistent. Every time, there was a new story. Therefore, both Courts rightly disbelieved the accused. In his statement under Section 313 of the Criminal Procedure Code, again, he came up with a new story of snatching his car. Therefore, he stopped the payment. He runs a beer bar. He stated in his statement under Section 313 of the Criminal Procedure Code that the

complainant and his friends used to go to his Beer shop to take Beer. That goes to show that they were families.

10. Section 20 of the Negotiable Instruments Act provides for the Inchoate Stamped Instruments that authorize the holder of the cheque in due course to complete the contents of the negotiable instrument if it was issued blank with signature only. On this point, the law is settled by the judicial pronouncements of the Hon'ble Supreme Court that issuing the blank signed cheque would not absolve the accused from liability. However, the holder of the cheque in due course cannot fill the amount more than he is entitled. Once the cheque is issued and proven to be dishonoured, the presumption under Sections 118 and 139 of the Negotiable Instruments Act would attract.

11. The accused may rebut the presumption either by bringing the material from the cross-examination of the complainant and his witnesses or by examining the independent witnesses. The accused did not examine any witness, nor he entered the witness box. No material was extracted from the evidence of the complainant to rebut the above legal presumptions. Therefore, both Courts have correctly applied the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act.

12. Snatching is an act of taking something from somebody by applying force without his/her consent. Snatching any movable

article from the possession of someone without his/her consent is theft. As against snatching, losing something means forgetting something or becoming unable to find something. It is a sort of negligence of the person who legally possessed the articles. So, considering the meanings of these terms, the Court does not agree with the learned senior counsel that the terms snatching and losing are synonymous.

13. After having gone through the impugned judgments and orders, the Court did not find any error on the face of the record.

14. As far as the enhancement of the sentence is concerned, when a person is held guilty under Section 138 of the Negotiable Instruments Act, the Court may punish the accused with imprisonment for a term which may extend to two years or with a fine which may extend to twice the amount of the cheque or with both. Section 357 of the Criminal Procedure Code empowers the Court to grant compensation to the aggrieved. It is the discretion of the Court how much compensation should be awarded. However, such discretion shall be exercised judiciously. The nature of the dispute, the status of the parties, the expected loss of the complainant, the conduct of the accused, and the purpose of paying money to the accused are the standard factors for determining compensation.

15. Learned counsel for the complainant relied upon the case of H. Pukhraj Vs. D. Parasmal, (2015) 17 SCC 368 and argued that the relevant factors were not considered while determining the compensation. The practical and realistic view ought to have been taken while exercising discretion. It was the hard-earned money of the complainant. He had a dream to have a house for his old age. The accused used his money since 2016.

16. The reasons assigned by both Courts determining the compensation were not in the tune of the ratio laid down by the Hon'ble Supreme Court in the case of H. Pukhraj (cited supra). In the above case in para 6, the Hon'ble Supreme Court has referred to the ratio laid down in the case of Suganthi Suresh Kumar Vs. Jagdeeshan, (2002) 2 SCC 420, which reads thus :

“6. In Suganthi Suresh Kumar v. Jagdeeshan, this Court was considering the propriety of inadequate sentence imposed by courts on the accused charged under Section 138 of the NI Act. This Court expressed displeasure about courts imposing a flea-bite sentence on the accused. The following paragraph from the said judgment could be quoted :

“12. The total amount covered by the cheques involved in the present two cases was Rs.4,50,000/-. There is no case for the respondent that the said amount had been paid either during the pendency of the cases before the trial court or revision before the High Court or this Court. If the amounts had been paid to the complainant there perhaps would have been justification for imposing a flea-bite sentence as had been chosen by the trial court. But in a case where the amount covered by the cheque remained unpaid, it should be the look out of the trial Magistrates that the sentence for the offence under Section 138 should

be of such a nature as to give proper effect to the object of the legislation. No drawer of the cheque can be allowed to take dishonour of the cheque issued by him light-heartedly. The very object of enactment of provisions like Section 138 of the Act would stand defeated if the sentence is of the nature passed by the trial Magistrate. It is a different matter if the accused paid the amount at least during the pendency of the case.”

17. The ratio laid down in the case of R. Vijayan Vs. Baby, (2012) 1 SCC 260 on granting compensation has also been discussed, which reads thus :

“7. Again, in R. Vijayan vs. Baby & Anr, this Court considered the same question. This Court also examined the need to award compensation to the complainant. This Court was of the opinion that (at SCC pp. 267-268, para 18) the traditional view that the criminal proceedings are for imposing punishment on the accused, either punishment or fine or both, and there is no need to compensate the complainant, particularly if the complainant is not a victim in the real sense, but is a well-to-do financier or financing institution, gives rise to difficulties and complications. This Court further observed that in those cases where the discretion to direct payment of compensation is not exercised, it causes considerable difficulty to the complainant, as invariably, by the time the criminal case is decided, the limitation for filing civil cases would have expired. This Court further observed that as the provisions of Chapter XVII of the NI Act strongly lean towards grant of reimbursement of the loss by way of compensation, the courts should, unless there are special circumstances, in all cases of conviction, uniformly exercise the power to levy fine upto twice the cheque amount keeping in view the cheque amount and the simple interest thereon at nine per cent per annum as the reasonable quantum of loss and direct payment of such amount as compensation. This Court further observed that the direction to

pay compensation by way of restitution in regard to the loss on account of dishonour of the cheque should be practical and realistic which would mean not only the payment of the cheque amount but interest thereon at a reasonable rate.”

18. The ratio laid down in the above cases was that the provisions of Chapter XVII of the Negotiable Instruments Act strongly lean towards the grant of reimbursement of the loss by way of compensation, the courts should, unless there are special circumstances, in all cases of conviction, uniformly exercise power to levy fine upto twice the cheque amount keeping in view the cheque amount and the simple interest thereon at nine per cent per annum as the reasonable quantum of loss and direct payment of such amount as compensation. The direction to pay compensation by way of restitution in regard to the loss on account of dishonour of the cheque should be practical and realistic, which would mean not only the payment of the cheque amount but interest thereon at a reasonable rate.

19. It is not in dispute that the complainant, a senior citizen, has been running from pillar to pole to recover his money since 2016, which he had paid to the accused for his proposed apartment project. The defence of the accused appears false. He was a businessman running a Beer bar. So, it must be presumed that he knew the importance of the interest and probably he must have earned much

from the money received from the complainant by investing in his business and gained the profit.

20. Out of the total amount of Rs.6,50,000/-, the accused has deposited Rs.1,40,000/- as per order of the Courts as a law mandate. It is apparent that the complainant has suffered a huge loss, and he could not bring his dream true to have the residence in his old age. He could have received good returns if he had deposited the money in the Bank in a fixed deposit. The accused never offered a substantial amount to the complainant, even after two judgments against him. That shows his ill intention to use the money of the senior citizen for his benefit. Therefore, the ratio laid down in the case of R. Vijayan (cited supra) would squarely apply to the case at hand. The reasons assigned by the learned Courts for denying the enhancement appear not in consonance with the law.

21. In view of the above facts and considering the status of both complainant and the accused, the Court believes that the complainant has a good case for enhancement of the compensation, and the revision preferred by him deserves to be allowed. Now the Court proceeds to pass the following order :

ORDER

- (i) Criminal Revision Application No.179 of 2022 stands dismissed. Rule stands discharged.
- (ii) Criminal Revision Application No.247 of 2022 stands allowed.

(iii) The order of the learned Additional Sessions Judge, Aurangabad, passed in Criminal Appeal No.37 of 2019 dated 13.06.2022 and the learned Magistrate in S.C.C. No.1216/2017 dated 8.2.2020 stands quashed and set aside to the extent of compensation.

(iv) The order of the learned Judicial Magistrate First Class granting compensation of Rs.7 lacs stands modified as follows :

(a) The accused shall pay the compensation to the complainant the cheque amount with interest at the rate of 9% p.a. from the date of dishonour of the cheques till its realization, and in default, the accused shall undergo R.I. for six months.

(v) The bail and surety bonds of the accused stand cancelled, and surety stands discharged.

(vi) Record and Proceedings be returned to the learned Judicial Magistrate First Class, Court No.6, Aurangabad.

(vii) The accused shall surrender before the trial Court for undergoing the sentence imposed upon him by the learned Additional Sessions Judge in Criminal Appeal No.37 of 2019, on or before 30.08.2023.

(viii) Rule made absolute in above terms.

(S.G. MEHARE, J.)