

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

**CRIMINAL REVISION APPLICATION NO.207 OF 2019
WITH REVN/208/2019 WITH APPLN/2462/2019 IN REVN/207/2019**

Premkumar S/o Surajmal Chandak,
Age : 59 Years, Occ. Business and Agri,
R/o. Abdimandi, Daulatabad,
Dist. Aurangabad ..Applicant

VERSUS

Kishor S/o Kanhyalal Toshniwal,
Age : 51 Years, Occ. Business,
R/o. Post Tirthpuri, Tq. Ghanswangi,
Dist. Jalna .. Respondent

...
Advocate for Applicants : Mr. G.V. Wani h/f Mrs.S.N. Devmane
Advocate for Respondent : Mr. Y.G. Somani
...

CORAM : S. G. MEHARE, J.

DATE : 06.07.2023

JUDGMENT :

1. Rule. Rule made returnable forthwith heard finally with the consent of the respective parties.
2. The applicant/accused impugned the Judgment and order of the learned Judicial Magistrate F.C. Court No.2 Ambad, passed in Summary Trial Case No. 285 of 2009 dated 01.07.2015 and Judgments and order of the learned Additional Sessions Judge-1 Jalna in Criminal

Appeal No. 59 of 2015 dated 14.06.2019 and in Criminal Appeal No. 62 of 2015 dated 14.06.2019.

3. The brief facts of the case were that the complainant had filed a complaint under Section 138 of the Negotiable Instruments Act against the accused/ present applicant. The complainant has a case in which the present applicant had issued a cheque in question towards the discharge of legally enforceable debt. However, it was returned for want of money insufficient funds in the accused/applicant's account. The complainant made acquaintance with the accused through his brother-in-law, and became friends. In the year 2008, the accused asked the complainant to pay a hand loan of Rs. 7,00,000/- for four months. Out of the friendship, he paid Rs. 7,00,000/- and against that, the cheque in dispute was issued. However, the cheque was dishonoured, and a complaint was filed.

4. The present applicant/accused had a defence that he had no business with the complainant. He had some business transactions with the brother-in-law of the complainant. The applicant misused the cheque in dispute with the help of his brother-in-law. He never received Rs. 7,00,000/- from the complainant. The remaining cheques from the same cheque books were used in the year 2005 itself. This fact was not considered by both the Courts to believe his defence.

5. The learned counsel for the applicant/accused has vehemently argued that the complainant did not prove the legally enforceable debt, and the cheque in dispute was issued for the same. The entire facts and circumstances of the case were not considered, and the learned Judicial Magistrate held the accused guilty and imposed a fine of Rs. 10,000/- and in default to suffer simple imprisonment for three months and also directed to pay the compensation of Rs. 10,00,000/- (Rupees Ten Lakhs) within two months after the appeal period was over. He would submit that the appeal preferred by the accused was dismissed by confirming the Judgment and order of the learned Judicial Magistrate. However, an appeal preferred by the complainant for enhancement of the sentence was also allowed, and Judgment and order of the Judicial Magistrate was modified the sentence imposing the fine amount of Rs. 14,00,000/- (Rs. Fourteen Lakhs only) and in default to pay the fine amount to suffer simple imprisonment for six months. He further directed that after recovery of the fine amount of Rs. 14,00,000/- (Rs. Fourteen Lakhs) from the accused to be paid to the complainant towards compensation under sub-section (1) of Section 357 of the Code of Criminal Procedure after the appeal period is over. The learned counsel for the applicant would argue that the

learned Additional Sessions Judge-1 Jalna passed two contradictory orders which are against the provisions of law. No legal and proper reasons were assigned to enhance the compensation and, in default, imprisonment. Therefore, both orders are illegal, perverse and incorrect.

6. Per contra, the learned counsel for the complainant would submit that there is no error on the face of the record. No relief was granted to the accused in both appeals. He was correctly held guilty of the offence punishable under Section 138 of the Negotiable Instrument Act. Section 138 of the Negotiable Instrument Act prescribes a punishment of up to six months and fine, which may extend to twice the cheque amount or both. The learned Additional Sessions Judge has correctly assigned the reasons in his Judgment that since 2008 till the date of pronouncing of Judgment, the accused used the hand loan of Rs. 7,00,000/- obtained from the complainant. Further, he has to face a legal battle. These were the pragmatic views of the learned Additional Sessions Judge, enhancing the fine amount and directing him to pay the compensation amount. There were no merits in the petition; hence, it is liable to be dismissed.

7. This is a revision after the dismissal of the appeal under Sections 397 and 401 of the Code of Criminal Procedure. There is very limited

scope to the Court. This Court has to examine the legality, propriety and correctness of the impugned judgments and orders. If the Judgment is perverse and erroneous on the face of record the Court may interfere. In such a revision after the appeal, the Court need not re-appreciate the facts.

8. In view of the powers discussed above, the Court is of the view that the Court need not re-appreciate the evidence to ascertain whether the cheque in dispute was never issued to the applicant and was misused. Both the Courts i.e. trial Court and Appellate Court, appreciating the evidence, held that the cheque was issued to the complainant. That apart, even today, the applicant did not deny the issuance of a cheque and had material to show that it was issued for any other purpose. He also did not deny the friendship or acquaintance with the complainant. The complainant appears to have proved the issuance of the cheque in question for the legally enforceable debt; therefore, the Court has correctly applied the presumptions under Sections 118 and 139 of the Negotiable Instrument Act. So there shall be no scope to interfere with the Judgments and orders as there was no apparent error on the face of the record.

9. As far as the order of enhancing compensation to be paid out of the fine amount is concerned, the Court is of the view that Sections

357 of Cr.P.C., and 138 of the Negotiable Instruments Act, shall be read together. Negotiable Instrument Act was amended in 2018, incorporating Section 143(a) by which the Court was empowered to direct to pay the interim compensation, and sub-section 6 of the said section provides to reduce the amount paid or recovered as compensation under the said section if the compensation is awarded under Section 357 of Code of Criminal Procedure.

10. The impugned Judgment of the learned Additional Sessions Judge enhancing the fine amount and directing to recover or pay compensation appears that he has considered specific facts. The reason assigned by the learned Additional Sessions Judge that the huge amount of Rs. 7,00,000/- was used for a long period and put the complainant to face the legal battle also appears to be probable and logical. However, some facts may be considered in view of the defence raised by the applicant. The complainant never stated that the applicant had made the money from the money paid to the accused/applicant.

11. The learned counsel for the applicant would submit that the applicant has a small business. An amount of Rs. 3,00,000/- has already been deposited in this Court in 2019, and the complainant withdrew that amount. The complainant has enjoyed the said amount

since then. These are the mitigating circumstances to modify the order of enhanced compensation as imposed in Criminal Appeal No. 62 of 2015. Considering the facts of the case discussed above, the following order is passed.

ORDER

- (i) The revision application No. 207 of 2019 stands dismissed.
- (ii) Revision Application No. 208 of 2019 is partly allowed.
- (iii) The Judgment and order of the learned Additional sessions Judge, Jalna in Criminal Appeal No. 65 of 2015 dated 14th June 2019 stands modified as under :-

The accused is sentenced to pay the fine amount of Rs. 10,00,000/- (Rupees Ten Lakhs), and in default to the pay fine amount, he shall suffer simple imprisonment for three months and out of the fine amount the compensation of Rs. 9,90,000/- be paid to the complainant and remaining ten thousand be deposited with the trial Court as a fine amount within four months from today. If the applicant fails to pay the above compensation amount within four months from today, it shall carry an interest @ of 9% per annum till recovery from today.

- (iii) The amount of Rs. 3,00,000/- which was deposited by the applicant and withdrawn by the complainant, shall be deducted

from the above compensation amount.

- (iv) Rule made partly absolute.
- (v) Remaining application, if any, stands disposed of.
- (vi) Record and proceeding be returned to the trial Court.

(S. G. MEHARE)
JUDGE

ysk