**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.**

CRIMINAL REVISION APPLICATION NO. 109 OF 2016

APPLICANT (Original Accused) : Shankar S/o. Sadashiv Talse, Aged about 59 years, Occu: Labourer, R/o. Rangaripura, Old Ward No.26, Near House of Shri Mohbia, Wani, Tahsil Wani, Dist. Yavatmal.

//VERSUS//

NON-APPLICANTS (Original Complainant) :

1. Navoday Urban Credit Co-operative Society Ltd., Wani, Regd. No.1156, C/o. 1st Floor of Shri Deshkar's House, Ward No.18, Jata Shankar Chowk, Wani, through its Secretary Shri Vijay Gangadharji Barde.

2. State of Maharashtra, through PSO, Wani, Dist. Yavatmal.

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Mr. Raja Dandwate, Advocate h/f. Mr. M.P. Khajanchi, Advocate for the Applicant.
Mr. A.K. Bangadkar, Advocate for Non-applicant No.1.
Mr. A.R. Chutke, APP for Non-applicant No.2/State.

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CORAM : G. A. SANAP, J.
DATED : 9th JUNE, 2023.

ORAL JUDGMENT

In this revision application, challenge is to the judgment and order dated 2nd July, 2016, passed by the learned Additional

Sessions Judge, Kelapur, whereby the learned Additional Sessions Judge dismissed the appeal filed by the applicant/accused and confirmed the conviction and sentence awarded by the learned Judicial Magistrate First Class, Wani for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the "N.I. Act" for short). The learned Judicial Magistrate First Class, Wani, on conviction, had sentenced the accused to suffer simple imprisonment for six months and to pay compensation of Rs.1,72,325/- to the complainant/society and in default of compensation to further suffer rigorous imprisonment for two years.

02] In this judgment, parties would be referred by their nomenclature. Applicant is the accused. Non-applicant is the complainant-Credit Co-operative Society. The accused had taken a loan of Rs.1,25,000/- from the complainant on 2nd April, 2005. He failed to repay the loan. Therefore, by notice dated 14th March, 2007, the accused was called upon to pay an amount of Rs.46,003/- towards interest on the principal amount. The accused did not repay the loan amount. In order to clear the loan amount, the accused issued a cheque in favour of the complainant, drawn on his account maintained with Pusad Urban Co-operative Bank

Limited, Branch at Wani dated 30th August, 2007 for Rs.1,72,325/- to the complainant. On presentation of the cheque for encashment, it was dishonoured with an endorsement 'refer to drawer'. The complainant issued a demand notice on 26th September, 2007. The accused despite receipt of the notice neither replied the notice nor paid the amount. The complainant, therefore, filed a complaint. The learned Judicial Magistrate First Class, Wani took cognizance and issued process against the accused.

03] The complainant examined one witness. The accused did not adduce evidence in support of his defence. The learned Magistrate, on consideration of the evidence, held the accused guilty for the offence punishable under Section 138 of the N.I. Act and sentenced him as above. The appeal filed by the accused against his conviction and sentence came to be dismissed by the learned Additional Sessions Judge, Kelapur. The accused is, therefore, before this Court.

04] I have heard Mr. Raja Dandwate, learned advocate holding for Mr. M.P. Khajanchi, learned advocate for the accused, Mr. A.K. Bangadkar, learned advocate for the complainant and Mr. A.R. Chutke, learned Additional Public Prosecutor for the State. Perused the record and proceedings.

05] On perusal of the record, it is seen that the Courts below have recorded concurrent findings of fact. The accused has admitted the issuance of cheque. There is hardly any dispute about dishonour of cheque on the ground 'refer to drawer'. The demand notice was issued to the accused. Despite receipt of notice, the accused did not pay the cheque amount. In this case, on the basis of the evidence, the complainant has established the foundational facts to invoke the presumption provided under Section 139 of the N.I. Act against the accused. Similarly, in the facts and circumstances, the presumption under Section 118 of the N.I. Act would also get attracted against the accused. The accused has not adduced evidence to rebut the said presumption. On the basis of the material, the Courts below have recorded findings that the cheque was issued by the accused to discharge his legal liability.

06] On going through the record, I am of the view that the concurrent findings of fact recorded by the Courts below could not be said to be perverse, arbitrary or unreasonable. Therefore, in this case on merits, no interference is warranted in the concurrent findings of fact recorded by the Courts below.

07] The next important question is with regard to substantive sentence. Learned advocate for the accused submitted that the accused has deposited Rs.1,72,325/- in the trial Court. It is pointed out that amount of Rs.86,175/- was deposited on 27th July, 2016 and amount of Rs.86,175/- was deposited on 17th September, 2011. Learned advocate for the accused pointed out that against the loan amount of Rs.1,25,000/-, the accused has deposited Rs.1,72,325/- as compensation. Learned advocate submitted that the purpose of the complainant, which is a Credit Co-operative Society, has been served. Learned advocate, therefore, submitted that the order with regard to the substantive sentence may be set aside or modified. Learned advocate pointed out that the accused was in jail for near about 10 days. Learned advocate submitted that, therefore, the substantive sentence be modified and the accused be ordered to undergo imprisonment already undergone by him.

08] Learned advocate for the complainant in all fairness submitted that the amount deposited towards compensation, if ordered to be paid to the complainant, would serve its purpose. Learned advocate submitted that in the exercise of discretion, this Court may consider modifying the order with regard to the substantive sentence.

09] In my view, the purpose of the complainant has been served. Against the loan amount of Rs.1,25,000/- (One Lakh

Twenty Five Thousand), the accused has paid an amount of Rs.1,72,325/- (One Lakh Seventy Two Thousand Three Hundred Twenty Five). As far as the recovery of amount is concerned, grievance of the complainant has been fully redressed. No purpose would be served by sending the accused to jail. The decision was rendered in the year 2010. The complaint was filed in the year 2007. The accused has faced ordeal of this prosecution for near about 15-16 years. In the facts and circumstances, the substantive sentence is required to be modified by exercising the discretion.

10] Accordingly, the revision application is **dismissed**. The substantive sentence is modified as under:

The applicant-accused is awarded the sentence, which he has already undergone. The amount of Rs.1,72,325/- (One Lakh Seventy Two Thousand Three Hundred Twenty Five) deposited in the trial Court be paid to the complainant.

(G. A. SANAP, J.)

Vijay