

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

CRIMINAL REVISION APPLICATION NO. 136 OF 2017

Vinod s/o Dharampal Batra,
 Age 50 years, Occupation-Business,
 R/o. Plot No.175, Near Shyam Medical Stores,
 Wardhman Nagar Chowk,
 Nagpur-440 008.

.. Applicant
 (Original Accused)

.. Versus ..

1] ~~State of Maharashtra, Through~~
~~its Police Officer, Police Station,~~
~~Lakadganj, Nagpur.~~

Deleted as per order
dt. 04.06.2018

2] Shri Sunil s/o Daulatram Khushalani,
 Aged about 52 years,
 Occupation-Business,
 R/o. Flat Nos.302 and 303,
 Sai Lalita Apartment No.3,
 Near Gondwana Chowk,
 New Colony, Byramji Town,
 Nagpur-440 001.

.. Non-Applicant
 (Original Complainant)

.....

Ms. A.S. Mishrikotkar, Advocate for Applicant,
 Mr. S.L. Kotwal, Advocate for Non-Applicant.

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CORAM : G.A. SANAP, J.
DATED : 06.07.2023.

ORAL JUDGMENT

1. In this revision application, challenge is to the judgment and order dated 05.05.2017 passed by the learned Additional

Sessions Judge-3, Nagpur, whereby the learned Additional Sessions Judge-3 dismissed the appeal filed by the applicant-accused, confirming his sentence for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short 'N.I.Act').

2. The learned Judicial Magistrate, First Class, Nagpur, on conviction, had sentenced the accused to suffer simple imprisonment for six months and to pay compensation of Rs.1,00,000/-.

3. Heard the learned advocates for the applicant and the non-applicant.

4. Learned advocate for the non-applicant (original complainant) would submit that this court can set aside the order with regard to the substantive sentence. Learned advocate, however, would submit that the amount of compensation of Rs.1,10,000/- deposited by the applicant in this Court may be ordered to be paid to the original complainant.

5. In my view, the submission is fair and reasonable. This revision application can be disposed of on merits by keeping in mind the submissions of the learned advocate for the original complainant.

6. The complainant and the accused are acquainted with each other. It is the case of the complainant that the accused was in need of money. Therefore, on demand of the accused, the complainant paid Rs.2,00,000/- to the accused. The accused had assured to repay the same. The accused had issued him 14 cheques by way of security. Out of 14 cheques, two cheques were dishonoured. The cheque bearing no.071488 was for Rs.50,000/- and cheque bearing no.009175 was for Rs.25,000/-. On receipt of intimation of dishonour with endorsement "exceeds arrangement", the complainant issued a notice to the accused on 25.11.2003. The accused, despite receipt of the notice, did not pay the amount. The learned Magistrate, on filing the complaint, took cognizance and issued the process.

7. The learned Magistrate, on consideration of the evidence adduced by the complainant, has convicted and sentenced the

accused as above. The appeal filed by the applicant-accused against his conviction and sentence was dismissed. The accused is, therefore, before this Court.

8. I have gone through the record and proceedings. The cheques are at Exh.17 and 18. Exh.19 and 20 are the cheque return memos sent by the bank to the complainant. The reason mentioned for dishonour of cheques is 'exceeds arrangement'. The accused has admitted receipt of the notice at Exh.21. The complainant, on the basis of oral as well as documentary evidence, proved the basic ingredients of Section 138 of the N.I. Act. The question is, whether the evidence was sufficient to establish the foundational facts to invoke the presumption provided under Sections 118 and 139 of the N.I. Act against the accused. The Courts below have recorded the concurrent findings of fact. On the basis of evidence, the complainant has established the foundational facts to invoke the presumption against the accused.

9. In the backdrop of the above evidence, it is necessary to see whether the case in question is a fit case to invoke the

presumption under sections 118 and 139 of the N. I. Act. As per Section 118 of the N. I. Act, until the contrary is proved, the Court has to presume that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration. The presumption is also there with regard to its date and time of acceptance. Section 139 provides that it shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque for the discharge, in whole or in part, of any debt or other liability. The complainant has adduced sufficient evidence to prove the basic ingredients of section 138 of the N. I. Act. He has proved the issuance of cheque by the accused. He has proved actual nature of the transaction between him and the accused. In my view, therefore, the presumption under sections 118 and 139 of the N. I. Act has been invoked against the accused on the basis of the evidence.

10. The applicant-accused was required to produce the evidence to rebut the presumption. The accused has not adduced

the evidence, after recording his statement under Section 313 of the Code of Criminal Procedure. The material on record is also not sufficient to rebut the presumption invoked against the accused. The courts below have taken entire evidence into consideration and, therefore, convicted and sentenced the accused. In my view, no interference is warranted in the concurrent findings of fact recorded by the courts below.

11. On going through the record and the proceedings, I am satisfied that the findings of fact recorded by the Courts below are based on proper appreciation and consideration of evidence. No interference is warranted in the concurrent findings of fact.

12. The question is, whether the order with regard to substantive sentence for six months is warranted in view of the submissions advanced by the learned advocate for the complainant as recorded hereinabove. In my view, considering the relation between the accused and the complainant and the fact that the accused has deposited the amount of compensation of Rs.1,10,000/-, the substantive sentence may not be warranted. The learned

advocate for the complainant has fairly conceded that the said order may be quashed and set aside.

13. Accordingly, the revision application is partly allowed. The order of substantive sentence i.e. simple imprisonment for six months, is set aside. The order with regard to the compensation is maintained. The amount of compensation i.e. Rs.1,10,000/- (Rs. One Lac Ten Thousand only) deposited in this Court by the applicant-accused pursuant to the order dated .8th September, 2017, be paid to the non-applicant (original complainant).

[G. A. SANAP, J.]

Gulande