



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

CRIMINAL APPLICATION NO. 2784 OF 2023

Abhaykumar Bansilal Mutha

VERSUS

State of Maharashtra & Anr.

Mrs. Rashmi S. Kulkarni, Advocate for the applicant.

Mr. K.B. Jadhavar, AGP for the respondent-State.

Mr. A.N. Barhate, Advocate for respondent No.2.

CORAM : KISHORE C. SANT, J.

DATE : 27.11.2024

PC :-

01. Present application is filed praying for taking action against respondent No.2 for taking action under section 340 r/w section 195(1) (b)(i) of the Criminal Procedure Code, for the offences punishable under sections 192, 193, 199 and 200 of the Indian Penal Code and for initiating action of contempt under Article 215 of the Constitution of India. The applicant has filed this application, since the respondent No.2 has filed false affidavit in Criminal Application No. 1635 of 2022 in Criminal Revision Application No.177 of 2021 and in Criminal Application No. 3326 of 2022 in the same revision application and for making a false statement which is recorded by this Court in order dated 03.10.2022. It is alleged that by way of filing such affidavit and making statement, he obtained orders from this Court.

02. The applicant happens to be an original complainant in a case under section 138 of the Negotiable Instruments Act, wherein respondent No.2 was the accused. The case was registered as STC No.127 of 2005. The respondent came to be convicted in the said trial by judgment and order dated 13.08.2012. It was directed to undergo rigorous imprisonment of three months and to pay fine of Rs.2,60,000/- with default sentence. Out of the amount of fine, amount of Rs. 2,50,000/- was to be paid to the applicant by way of compensation. Respondent No.2 preferred an appeal to the Sessions Court, Shrirampur, challenging the judgment and order of conviction. The Sessions Judge in an appeal set aside the substantive sentence by maintaining the conviction and directed to pay compensation. It is against this judgment, the applicant had approached this Court challenging the order passed by the Additional Sessions Judge in Appeal no. 22 of 2012 to the extent of setting aside the substantive sentence and also prayed for additional compensation of Rs.2 lakhs. Respondent No.2 also filed Criminal Revision Application No. 13 of 2018 after limitation period was over and filed application for condonation of delay. In Criminal Revision Application No. 13 of 2018, the accused initially prayed for referring the matter for mediation. This Court directed him to deposit Rs.50,000/- to show bonafides. From time

to time he sought time to deposit the said amount by giving undertaking to this Court. Thereafter, he also sought time to deposit Rs.1,50,000/- and that was granted with some observations.

03. In the revision filed by respondent No.2, he filed application for suspension of sentence and at that time also he gave undertaking to this Court that he would deposit the amount. In spite of all these various undertakings, respondent No.2 had not deposited the amount in spite of an undertaking and on the other hand he solicited order of suspension of sentence from this Court on the pretext that he would deposit the amount.

. By order dated 16.03.2022 this Court allowed the Criminal Revision Application No. 13 of 2018 and restored the substantive sentence of the accused. Criminal Revision Application No. 177 of 2021 of the accused came to be dismissed. It is, thereafter, the respondent filed another application No. 1635 of 2022 invoking powers under section 482 of the Cr.P.C. He prayed for quashing of the judgment and order dated 16.03.2022 passed in Criminal Revision Application No. 177 of 2021 and at that time also he made a categorical statement that he would deposit Rs. 1 lakh for settlement.

04. After rejection of the application, the respondent, thereafter, even filed an SLP before the Hon'ble Supreme Court challenging the judgment passed by this Court in revision of this applicant. In SLP the Hon'ble Supreme Court permitted the accused to deposit remaining amount before this Court within 7 days from the date of passing of the order. This order was without touching merits of the matter and the order passed by this High Court was not set aside. This order was obtained by representing before the Hon'ble Apex Court that the matter is settled between the parties. Thus, on this background this application is filed, when in-fact there was no settlement. It is pointed out that respondent No.2 misled this Court by making statement that the parties have arrived at settlement after the decision of the revision application and respondent No.2 was ready to deposit the remaining amount of Rs. 1 lakh and thus it is stated that respondent No.2 committed serious offence by making false statement that caused obstruction to the administration of justice.

05. This Court issued notice to the respondents. Respondent No.2, however, did not immediately accept the notice and much efforts were taken by the applicant to serve respondent No.2. Various orders were passed by this Court. Respondent No.2 appeared in the revision,

however, he again sought time on some or other pretext and avoided to deposit the remaining amount. The only part of amount was deposited during the pendency of the appeal while obtaining the order of suspension of sentence. Remaining amount was not paid though revision and even this application was on board on many times. Respondent No.2, thereafter, appeared as it was specifically recorded in the order dated 04.10.2024 that inspite of order dated 28.08.2024 to show cause as to why action should not be taken under the Contempt of Courts Act. Respondent No.2 still neither filed reply nor tendered apology, this Court in the said order looking to the conduct recorded that the respondent has clearly committed contempt and issued notice in the format. Even after service of notice in the format, the respondent remained absent. This Court, therefore, passed order directing him to remain present and in case of failure warrant would be issued. It is only, thereafter, on 26.11.2024 respondent No.2 remained present and tendered unconditional apology on affidavit and was ready with demand draft of Rs.50,000/- in the name of the Registrar (Judicial) of this Court. This matter was thereafter kept on 27.11.2024, after the cheque was deposited in this office.

06. From the conduct, recorded above, of respondent No.2, it is

clear that respondent No.2 has deliberately avoided to obey the orders passed by this Court. It is also clear from various orders and the affidavit filed by the respondent that he has given false assurance/undertaking to this Court and has misled this Court. It is because of such statements, this Court passed the orders granting time to respondent No.2. It appears from the record that respondent No.2 made false statement even before the Hon'ble Apex Court, purportedly saying that the matter is settled between the parties and he only needs time to deposit the amount before this Court, when in-fact at no point of time, there was any settlement between the parties. As is clear from the conduct that it was only an eye wash and this conduct clearly calls for action at the hands of this Court.

07. Coming to the prayers of the applicant, the prayers are for initiating action under sections 192, 193, 199 and 200 of the IPC. This Court finds that section 192 is about fabricating and false evidence. This Court does not find that any case is made out showing that respondent No.2 has fabricated any evidence. Thus, no action is required under sections 192, 193 of the IPC. So far as section 199 of the IPC is concerned, this Court finds that though the statement is made, however, it is not a declaration receivable as evidence and thus no case is made

out under sections 199 and 200 of the IPC. Even from the conduct of the Advocate appearing for respondent No.2 in this case it appears that the he should have properly made respondent No.2 aware of the consequences of the contempt proceeding. The 2nd respondent was aware of the exact consequences of the conduct and still he ventured to make false statement before this Court. This Court finds that Certainly a case is made out under Article 215 of the Constitution of India, calling for action of contempt. However, since respondent No.2 has tendered apology and has deposited the amount, this Court feels that instead of imposing substantive sentence, it is sufficient to admonish respondent No.2 for committing contempt of this Court. With this, the following order :-

ORDER

- (i) The criminal application is allowed in terms of prayer clause (B).
- (ii) Respondent No.2 is hereby admonished for committing contempt of this Court.

[KISHORE C. SANT, J.]