



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 169 OF 2024

Chanakya Nagri Sahakari Pat Sanstha Ltd.,
Aurangabad, Through its authorized signatory,
Santosh S/o. Shridharrao Vyavhare,
Age : 65 years, Occu. : Business,
R/o. 2-7-217, Satosh Niwas, Near Rips Hotel,
Paithan Gate, Taluka : Aurangabad,
Dist. Aurangabad

... Applicant

(Orig. Complainant/
Resp. in appeal)

Versus

1. Santosh S/o. Sudhakar Deo,
Age : 56 years, Occu. : Business,
R/o. House No. 5-26 - 15/2, Behind,
Telephone Bhawan, Ajab Nagar,
Aurangabad, District Aurangabad

2. The State of Maharashtra

... Respondents

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Mr. Rajendraraa Deshmukh, Senior Advocate a/w Ms. Ashwini
Deshmukh i/b. Advocate for Applicant.

Mr. Shivaji N. Dudhate, Advocate for Respondent No.1.
Mrs. Chaitali Chaudhari - Kutti, APP for Respondent - State.

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 10 DECEMBER 2024

PRONOUNCED ON : 02 JANUARY 2025

ORDER :

1. Aggrieved by the judgment and order dated 31.01.2023
passed by learned Additional Sessions Judge, Aurangabad in
Criminal Appeal No. 127 of 2017 arising out of judgment and order
dated 19.06.2017 passed by learned Judicial Magistrate First Class,

Aurangabad in S.C.C. No.5304 of 2024, original complainant has preferred instant revision.

2. Learned counsel for revisionist would submit that, proceeding under section 138 of Negotiable Instruments Act was instituted by complainant i.e. a Patsanstha against present respondent. After appreciation of evidence, learned trial court i.e. learned J.M.F.C. (Court No.12), Aurangabad by order dated 19.06.2017 held offence of section 138 of N.I. Act to be proved and accordingly awarded sentence to the present respondent as well as compensation. That, said order was challenged before learned Additional Sessions Judge, Aurangabad. However, without assigning sound reasons, learned first appellate court partly allowed the appeal and without adhering to the sentencing policy reduced the sentence only till rising of the court.

3. Learned counsel submitted that, in fact, on complete appreciation, learned trial court had imposed sentence of three months and has directed fine as compensation. That, it was just and proper in view of the charge proved. That, there was no reason to interference, however, learned first appellate court reduced the sentence is grossly inadequate and therefore revision is sought to be allowed by setting the judgment and order of learned first appellate court.

4. Learned counsel for original accused - respondent herein would point out that, trial court had committed error in awarding huge compensation as well as sentence. That, considering the nature of proceeding, legislative intent, object of the act, sentence was found to be excessive and therefore learned first appellate court partly allowed the appeal by merely reducing the sentence. Remaining order is kept intact and hence for all above reasons, he prays to dismiss the revision.

5. After hearing submissions of both sides, it transpires that, vide S.C.C. No.5304 of 2012 present revisionist instituted complaint under section 138 of N.I. Act. Finding essential ingredients of section 138 of N.I. Act available in the evidence, learned trial court recorded guilt and sentenced present respondent to three months imprisonment, imposed fine as well as awarded compensation and huge costs. Said judgment and order was therefore questioned by filing Criminal Appeal bearing No.127 of 2017.

6. Perused both the judgments. Learned first appellate court partly allowed the appeal by maintaining the conviction, but interfered and modified sentence from three months to till rising of the court. Learned first appellate court, taking into account that

entire payment of compensation has been paid, by relying on the judgments of Hon'ble Apex Court and reproducing the relevant observations in paragraph nos.14 and 15, held that, said ruling is applicable, applied the ratio and merely reduced the sentence. Thus conviction has been maintained. Revisionist does not dispute receipt of entire compensation of Rs.4,00,000/-. Keeping in mind the objects, scope and legislative intent in incorporating section 138 of N.I. Act and when the statute itself provides mechanism for compounding even at appellate stage and moreover when revisionist does not dispute receipt of compensation, modification of sentence cannot be said to be any illegality or error. Resultantly, finding no reason to interfere, I proceed to pass the following order :

ORDER

The criminal revision application is hereby dismissed.

(ABHAY S. WAGHWASE, J.)