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IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 27 OF 2026

SHRI RAMA NARAYAN FADTE, … APPLICANT

~ VERSUS ~

M/S V.B. NAIK AND SONS AND ANR. … RESPONDENTS

APPEARANCES:

for the Applicant	***Mr. Parag Rao and Mr Akhil Parrikar, Advocates***
for Respondent No. 1	***Mr Abhay Nachinolkar and Mr Sahil Bandodkar, Advocates***
for Respondent No. 2	***Mr. Gaurish Nagvenker, Additional Public Prosecutor***

CORAM : AMIT S. JAMSANDEKAR, J.

DATED : 30th OCTOBER 2026

P.C:

1. Heard Mr. Rao, the learned Counsel for the Applicant.

2. By the present Application, the Applicant is challenging the order dated 14.07.2022 passed by the learned Additional Sessions Judge, FTC, North Goa,

Mapusa (***Sessions Court***), in Criminal Appeal No. 38/2021. By the impugned judgment and order, the learned Sessions Court upheld the judgment and order dated 10.08.2021 passed by the learned Judicial Magistrate First Class, Bicholim (***the JMFC***) in Criminal Case No. OA/85/NIA/2012/A. In addition to the compensation directed to be paid by the JMFC to the 1st Respondent under Section 357 of the Cr.P.C., the learned Sessions Court was pleased to direct the Applicant to undergo imprisonment till the rising of the Court.

3. Before I proceed to record rival submissions and the facts of the present case, I must note how the proceedings under Section 138 of the Negotiable Instruments Act, 1881 (***N.I. Act***), commenced in 2012 and reached this Court in Revision in 2022. The office objections raised after filing of the Revision Application in the year 2022 were cleared by the Applicant only in 2026, and that is how the Revision Application was finally numbered in 2026 and taken for final hearing thereafter.

4. The cheque issued by the Applicant (the accused) was dishonoured on 28.11.2011. The notice under Section 138 of the N.I. Act was sent by the 1st Respondent to the Applicant on 26.12.2011. The notice was sent to the Applicant by post on 02.01.2012. However, the Applicant refused it. Thereafter, the complaint was filed on 15.02.2012. Evidence of the 1st Respondent (the original complainant) was closed on 04.08.2015. Statement of the Applicant

(Accused) under Section 313 of the Cr.P.C. was recorded on 20.08.2015 and thereafter, on the same day, the Applicant filed an Application seeking leave to produce defence evidence. On 07.11.2015, the JMFC allowed the said application. The JMFC disposed of the complaint by convicting the Applicant by the judgement and order dated 10.08.2021. Subsequently, the Sessions Court disposed of the Appeal on 14.07.2022.

5. In this background of facts, Mr. Rao, learned Counsel appearing on behalf of the Applicant, made the following submissions:

> i) He submitted that the entire trial proceeded without consideration of the application filed by the Applicant on 20.08.2015. By the said application, the Applicant sought leave to examine himself and his defence witnesses. The application was made after recording his statement under Section 313 of the Cr.P.C. Mr. Rao submitted that the said application was allowed by the learned JMFC on 07.11.2015. However, without affording the Applicant an opportunity to lead evidence, the learned JMFC proceeded further and concluded the arguments. He submitted that once the JMFC allowed the application of the Applicant, without giving an

opportunity to lead evidence, the matter ought not to have been heard finally. Therefore, he submitted that the entire trial against the Applicant is misdirected and in violation of the rule of natural justice.

ii) In addition, it is submitted that, without imposing a fine under Section 138 of the N.I. Act, the learned JMFC could not have ordered the Applicant to pay compensation under Section 357 of the Cr.P.C.; therefore, according to Mr Rao, the judgment and order of the learned JMFC is erroneous.

iii) Further, it is submitted that the judgement and order of the Sessions Court is contrary to Section 386(b)(iii) of the Cr.P.C. The learned Sessions Court has enhanced the sentence of the Applicant without jurisdiction despite clear bar and prohibition under Section 386(b)(iii) of the Cr.P.C.

iv) Therefore, Mr. Rao submitted, on behalf of the Applicant, that the procedure followed by the learned JMFC resulted in injustice to the Applicant. Additionally, the entire procedure adopted was contrary to the rule of law.

v) Mr. Rao further submitted that the judgments and orders passed by the learned JMFC and the learned Sessions Court are without considering the factual aspects of the matter. Both the Courts below failed to consider that no opportunity was given to the Applicant to lead evidence in defence. In any case, Mr. Rao submitted that the 1st Respondent did not establish the underlying transaction by not producing the relevant documents and therefore an adverse inference ought to have been drawn against the 1st Respondent. Therefore, it is submitted that the Revision Application be allowed.

6. On the other hand, Mr. Nachinolkar, the learned Counsel for the 1st Respondent submits that the findings of the JMFC and the Sessions Court are factually correct, and both Courts have correctly proceeded on facts and in law. He submitted that the present Revision Application is filed by suppressing the material, crucial and vital facts. The Applicant has not disclosed that, before the commencement of arguments in 2020, an application dated 17.01.2020 was filed on behalf of the 1st Respondent (original complainant), seeking closure of the evidence of the Applicant. This application was filed because, although the

Applicant was given an opportunity in 2015, the Applicant failed and/or neglected to lead any evidence for almost five years. The Applicant (Accused) filed a reply dated 24.01.2020 to the said application filed by the 1st Respondent. The said reply of the Applicant is quoted below:

> *"It is submitted that the application filed by the complainant seeking relief to pass necessary order on application dated 20.08.2015 is uncalled and redundant in the present proceedings. The complainant has not shown the provision to file the present application. The application filed by the accused to examine the witnesses in defense in the year, 2015 has been decided by this court on passing reasoned order. The said application forms part of the record and proceedings in the present case.* ***The accused has not examined the witnesses in defense of which the complainant has implied notice (knowledge) in the year, 2015. The complainant on having implied notice has himself proposed this court to fix the matter for arguments on merits.***
>
> ***The complainant has argued the matter on merits of the case and now cannot go back to the proceedings of the year, 2015 to reopen the trial.***
>
> *The application of the accused was not challenged by the complainant.* ***Any order passed by the court on application of the complainant shall amount to review of the order dated 20.08.2015.*** *There is no merit in the application of the complainant which indirectly propos the court to review its own order. In view of the circumstances stated above the application of the complainant dated 17.01.2020 deserves dismissal with costs."* (emphasis supplied)

7. On the basis of the reply filed by the Applicant, the learned JMFC was pleased to pass the following order on 29.01.2020:

> *"Complainant present with Advocate S. V. Pal.*
>
> *Accused present with Advocate S. V. Prabhugaonkar.*
>
> *Order passed on Exbh. D-80 –* ***same stands dismissed as non maintainable since the matter has already proceeded for final arguments.***
>
> *Matter is fixed in evening session.*
>
> *Case adjourn for FINAL ARGUMENTS/FURTHER FINAL ARGUMENTS ON 5.2.2020"*
>
> (emphasis supplied)

8. In view thereof, it is submitted that the Applicant himself did not lead any evidence, though an opportunity was given to him in 2015. The trial was prolonged because the Applicant persistently failed to appear and pursue the proceedings before the learned JMFC. The Applicant remained absent from the proceedings for years, and repeated non-bailable warrants were issued by the learned JMFC on several occasions. The learned Advocate appearing for the Applicant was helpless, as he did not have any instructions from the Applicant. The Roznama dated 29.10.2018 records the submissions made by the Applicant's Advocate that the Applicant is not in contact with his Advocate. The Roznama dated 29.10.2018 reads as follows:-

> *"Complainant present with Adv. A. Sawant.*
> *Accused absent.*
> ***Advocate S. V. Prabhugaonkar present for Accused and submitted that there are no instructrions from the accused.***
> *Issue NBW against the accused upon payment of process fees. Matter is fixed in the morning session.*
> *Case adjourn for :APPEARANCE."*
>
> (emphasis supplied)

9. It is, therefore, submitted that the present Application is merely a tactic to further delay the proceedings, which have been pending since 2012, particularly when the cheque issued by the Applicant was dishonoured on 28.11.2011.

10. I have heard the rival submissions and perused the record.

11. In view of the controversy raised by the Applicant that no opportunity was given to him, and the Respondent's contention that the Applicant has suppressed vital facts and documents, the record and proceedings were called for. I have perused the record and, in particular, the Roznama of the learned JMFC.

12. The Roznama clearly indicates that the Applicant remained absent from the proceedings for years, and, therefore, repeated non-bailable warrants were issued against him. The application filed by the Applicant on 20.08.2015, seeking permission to lead the evidence of the witnesses named therein, was allowed on 07.11.2015. However, no steps were taken by the Applicant to

examine any of the witnesses mentioned in the said application for years. The Applicant has suppressed these facts in the present proceedings.

13. On the contrary, the record shows that the Applicant chose to remain absent from the proceedings. The learned Advocate appearing for the Applicant was also helpless due to the lack of instructions from the Applicant.

14. After allowing the application of the Applicant to lead evidence, the matter was adjourned before the learned JMFC on 08.12.2015, 12.01.2016. Thereafter proceedings were stayed by the High Court as such matter was adjourned on all these dates (04.02.2016, 01.12.2016, 15.12.2016, 31.01.2017, 29.04.2017, 06.07.2017, 29.08.2017, 12.10.2017, 18.11.2017, 30.12.2017, 03.03.2018, 17.05.2018). Thereafter on 28.06.2018, 16.07.2018, 02.08.2018, 28.08.2018, 27.09.2018, 25.10.2018, 29.10.2018, 13.11.2018, 11.12.2018, 08.01.2019, 25.01.2019, 12.03.2019, 01.04.2019, 06.06.2019, 27.06.2019, 10.07.2019, 25.07.2019, 16.08.2019, 28.08.2019 and on 18.09.2019, the Applicant had sought time and matter was adjourned. Most adjournments were due to the Applicant's non-presence. There is not a single day on which the Applicant made an attempt to lead evidence, pursuant to the order dated 07.11.2015 on the application of the Applicant.

15. The Applicant did not lead any evidence pursuant to the order dated 07.11.2015 for almost five years; therefore, the 1st Respondent, before the commencement

of the final arguments, as a precautionary measure, filed an application on 17.01.2020 and sought an appropriate order for closure of the evidence of the Applicant. The Applicant opposed the said application by filing a reply, as quoted above. Thus, even before the commencement of final arguments, the Applicant chose not to lead any evidence and instead opposed the application filed by 1st Respondent. The Applicant has suppressed the reply filed by the Applicant to the 1st Respondent's Application to close the Applicant's evidence. I find that the suppression is intentional to abuse the process of law by falsely alleging the violation of the rule of natural justice.

16. In view thereof, I do not find any error on the part of the JMFC. The Applicant was given opportunities; however, the record clearly indicates that he failed to avail himself of those opportunities and abused the process of law. Therefore, I am not convinced by the arguments advanced by Mr. Rao that the JMFC committed any procedural error. Accordingly, I reject the said contention.

17. However, in view of the provisions of Section 357 of the Cr.P.C., the learned JMFC could not have ordered and directed payment of compensation to the 1st Respondent without imposing a fine under Section 138 of the N.I. Act. The learned JMFC had jurisdiction under Section 138 of the N.I. Act to impose a sentence, or a fine, or both. In this case, the learned JMFC chose to impose compensation under Section 357 of the Cr.P.C. without first imposing a fine

under Section 138 of the N.I. Act, which I am convinced was not in accordance with the provisions of law. Section 357 of the Cr.P.C. can be invoked only if a fine is imposed under the substantive provisions of a penal statute. It cannot be invoked on its own. When a fine is imposed under the substantive provisions of a statute, Section 357 of the Cr.P.C. empowers the Court to pay that fine as compensation to the victim.

18. Therefore, the proper procedure would have been to impose a fine under Section 138 of the N.I. Act and thereafter direct payment of compensation under Section 357 of the Cr.P.C. Therefore, insofar as this submission is concerned, I agree with Mr. Rao. However, that part of the order will not vitiate the entire proceedings and the same can be cured in the present Revision by imposing a fine under Section 138 of the Negotiable Instruments Act. Further, the learned Sessions Judge could not have enhanced the sentence in Appeal by virtue of the provisions of Section 386(b)(iii) of the Cr.P.C. Even this aspect can be cured in the present proceedings.

19. Therefore, in my view, the JMFC committed no other error; I find no reason to exercise revisional jurisdiction at this stage. Any modification of the judgments and orders passed by the learned JMFC and the learned Sessions Court would otherwise not be warranted and would not be in the interest of justice, except

for modification of the operative part of the orders of the learned JMFC and learned Sessions Court to the extent below.

20. Record indicates that the Applicant has deposited Rs.5,00,000/- on 1.11.2022, Rs.3,02,500/- on 16.11.2022, Rs.1,50,000/- on 16.7.2026 and Rs.1,20,000/- on 5.8.2026 respectively in the Registry of this Court.

21. Accordingly, the operative part of the order dated 10.08.2021 passed by the learned JMFC, Bicholim, and the order dated 14.07.2022 passed by the learned Additional Sessions Judge, Mapusa, are modified to the extent that the Applicant shall pay a fine of Rs.10,70,000/- to the 1st Respondent. The said fine shall be paid as compensation under Section 357 of the Cr.P.C. to the 1st Respondent. The operative part of the order dated 14.07.2022 passed by the learned Additional Sessions Judge, Mapusa, to the extent imposing sentence to undergo imprisonment till the rising of the Court is quashed and set aside.

22. With these modifications, the Application stands disposed of.

23. The Registry is directed to remit the amount of Rs.10,70,000/- deposited by the Applicant in favour of the 1st Respondent, after the lapse of four weeks, along with the accrued interest. The bank details furnished by the 1st Respondent are taken on record. Records and proceedings be sent back to the learned JMFC and the learned Sessions Court.

24. Revision Application stands disposed of. Pending Applications, if any, stand disposed of.

25. No order as to costs.

26. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

AMIT S. JAMSANDEKAR, J.

Signed by: VINITA VIKAS NAIK
Designation: Private Secretary
Date: 11/11/2026 11:56:34