

**(1998) 03 NCDRC CK 0038**

**In the National Consumer Disputes Redressal Commission**

HAZARIMAL NANDLAL SHEKHAWAT

APPELLANT

Vs

URMILAPEN MAGANLAL MISTRY

RESPONDENT

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**Date of Decision :** 20-03-1998

**Acts Referred:**

**Citation :** 1998 3 CPJ 564 : 1999 1 CPR 330

**Hon'ble Judges :** K.J.Vaidya , Jatin P.Vaidya J.

**Final Decision :** Revision application partly allowed

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**Judgement**

1. HAZARIMAL N. Shekhawat by this Revision Application has brought under challenge the impugned judgment and order dated 1.1.1998 passed by the Consumer Disputes Redressal Forum, Valsad in Application No. 44/1997 whereby he came to be sentenced to undergo two years" rigorous imprisonment and to pay a fine of Rs. 10,000/- and in default thereof to undergo further rigorous imprisonment of one year.

2. TO briefly state few relevant facts of the case, the opponent herein had filed a complaint being 92/95 before the Consumer Disputes Redressal Forum, Valsad against the applicant for the alleged deficiency in service, inter alia praying for certain compensatory reliefs. This came to be allowed by judgment and order dated 9.1.1997 wherein the applicant was directed to comply with the order within one month. Now, since the applicant as alleged wilfully disobeyed the District Forum's order the opponent herein filed Misc. Civil Application No. 44 of 1997 under Section 27 of the Act praying for appropriate order of punishment against him. The District Forum after hearing both the sides, allowed the said application and convicted and sentenced the applicant as stated above in para 1 of this judgment giving rise to the present revision application. This application was placed on admission board on 16.2.1998 and thereafter, at the request of Mr. Talpada it was adjourned twice. Accordingly, on 24.2.1998 when the matter was called out Mr. Talpada submitted that though the impugned order of sentence was illegal and unjust and accordingly deserves to be quashed and set aside, still, however, if one opportunity was given to his client he is prepared to

amicably settle the matter with the opponent. Mr. Talpada further submitted that to show bona fides, Parvatiben wife of the applicant was present before the Commission with Rs. 25,000/- in the first instance ready and willing to deposit the same with this Commission towards the part compliance of the impugned order passed by the District Forum if the Commission is inclined to issue notice to the other side for the amicable settlement. It was further submitted by Mr. Talpada that if the applicant who was in jail for last about two months, is temporarily released on bail, he would be able to further manage the rest of the amount to be paid off to the opponent by way of full and final settlement complying with impugned award passed against him. We under the circumstances finding the proposed compromise quite reasonable and accordingly taking a chance to enable the applicant to bring about the same with the opponent, if she was agreeable, by an order dated 24.2.1998 in the first instance directed the office to issue notice to the other side making it returnable on 4.3.1998 to find out if she was prepared to compromise, in the second instance directed the applicant to deposit the amount of Rs. 25,000/- as a part payment towards full and final payment to the opponent in this Commission and in the third instance ordered that the applicant be released on temporary bail for 21 days to enable him to collect balance amount of money to be paid to the opponent adjourning the hearing of the case on 4.3.1998.

In response to the said notice, opponent Urmilaben Maganlal Mistry has appeared before us. Not only that but both the parties have filed a joint pursh wherein it is stated that the matter is amicably settled between them and in that view of the matter, just and proper order be passed in the matter of sentence. The office is directed to take the said pursh is on record and give it exhibit number. In this regard, Mr. Talpada further submitted that by this time the applicant has already undergone about two months" rigorous imprisonment and in that view of the matter when the parties have amicably settled the matter, the sentence undergone be treated as sufficient and the rest of the order of sentence of fine of Rs. 10,000/- and in default to undergo further rigorous imprisonment for one year may be quashed and set aside.

3. BOTH the applicant with his learned Advocate and the opponent Urmilaben are present before us. They have been duly identified by the learned Advocate Mr. Talpada. They have also admitted the contents of their joint compromise purshis and their respective signature below the same. We have also put a specific question to opponent Urmilaben who is present before us viz whether the settlement arrived at between the parties was made freely and voluntarily and without any coercion and/ or undue influence to which she has stated that not only there was no coercion but she has been adequately compensated by the applicant. Under the circumstances, she has further urged that since her grievance of non-compliance of District Forum's earlier order stood fully redressed and the matter is amicably settled with the applicant accordingly for restoring and further maintaining goodwill and cordial relation between them, if the rest of the substantive sentence of imprisonment and fine is set aside, she

would be quite happy. Ordinarily, awarding of the sentence is a matter of discretion of the Trial Court and accordingly must be upheld and respected unless it is found to be quite excessive, harsh and unjust or unduly lenient manifestly illegal and/or perverse the higher Forum merely because it is higher is not supposed to interfere with the same. In fact, we believe that unless the stricter view of the situation is not taken (as taken in the present case) wherein the order of the District Forum is not complied with, then, not only the Consumer Protection Act will lose its affectivity but the Consumer Forum will also in turn loose its credibility as law enforcing agency. Under the circumstances, though ordinarily, we would not have interfered with the order of sentence passed by the District Forum, still, however, having regard to the special circumstances which were not there before the District Forum, namely the amicable settlement between the parties where the grievance of the opponent stands fully redressed, we feel that the settlement arrived at between the parties deserves to be taken into consideration and in the light thereof, the interest of justice would be indeed better served if accordingly the order of sentence to the extent the applicant has undergone is maintained and rest of the sentence of imprisonment yet to be served out and fine to be paid is quashed and set aside.

4. IN view of the fact that the dispute between the parties is a amicably settled between the parties, the amount of Rs. 25,000/- deposited by wife of the applicant before this Commission is hereby ordered to be handed over to the opponent by account payee cheque on or before 26.3.1998. In the result, this revision application is partly allowed and the impugned order of sentence as stated above is modified i.e. it shall remain as it is of the sentence undergone while rest of the substantive sentence and fine of Rs. 10,000/- and in default thereof to undergo rigorous imprisonment for one year is quashed and set aside. In other words, the petitioner shall not be sent to jail. The office is directed to give a copy of the operative order to the petitioner to be handed over to the office of the District Forum at Valsad. Revision application partly allowed.