

(2006) 07 BOM CK 0097

In the Bombay High Court

Case No : Criminal Rev. Application No. 291 of 2005

Rajendra Ramsing Ghorpade

APPELLANT

Vs

Shikshan Prasarak Mandal

RESPONDENT

Date of Decision : 13-07-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 357, 357(3), 482
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2006) 4 CivCC 325 : (2006) 5 MhLj 714 : (2007) 5 RCR(Criminal) 496

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : L.V. Sangit, for the Appellant; Rajendra Deshmukh, for the Respondent

Judgement

Anoop V. Mohta, J.—Heard by consent finally.

2. By consent the matter is remanded on following facts and reasons:

(i) The petitioner complainant initiated proceedings u/s 138 of the Negotiable Instruments Act (N.I. Act) against the respondent.

(ii) While passing the order of conviction u/s 138 of Negotiable Instruments Act, the Judicial Magistrate First Class (J.M.F.C.) Chalisgaon, has ordered sentence to suffer rigorous imprisonment for one year and to pay fine of Rs. 5,000/-, in default the accused to suffer further R.I. for two months. Admittedly, there is no whisper about the compensation as contemplated u/s 357(3), Criminal Procedure Code. The petitioner therefore, has challenged the present order to the extent of not awarding any compensation by the J.M.F.C. Undisputedly, the appeal filed by the accused against the same order is pending before learned Additional Sessions Judge, Jalgaon bearing No. 114/2005.

3. In view of the observations of the Apex Court in following cases, basic submission has been made by the petitioner that this is an appropriate stage, where the Court should invoke provisions of Section 482 of Criminal Procedure

Code and pass an order of awarding compensation in such matters considering the scheme of Negotiable Instruments Act (N. I. Act). Those observations are:

(a) In *K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another*, the Apex Court has observed thus:

30. It is true, if a Judicial Magistrate of the First Class were to order compensation to be paid to the complainant from out of the fine realised the complainant will be the loser when the cheque amount exceeded the said limit. In such a case of complainant would get only the maximum amount of rupees five thousand.

31. However, the Magistrate in such cases can alleviate the grievance of the complainant by making resort to Section 357(3) of the Code. It is well to remember that this Court has emphasised the need for making liberal use of that provision (*Hari Singh v. Sukhbir Singh*), No limit is mentioned in the sub-section and therefore, a Magistrate can award any sum as compensation. Of course while fixing the quantum of such compensation the Magistrate has to consider what would be the reasonable amount of compensation payable to the complainant. Thus, even if the trial was before a Court of a Magistrate of the First Class in respect of a cheque which covers an amount exceeding Rs. 5000/- the Court has power to award compensation to be paid to the complainant

32. The question of sentence and award of compensation must be considered by the trial Court. We deem it feasible that the Magistrate shall hear the prosecution and the accused on those aspects. Of course, if the complainant and the accused settle their disputes regarding this cheque, in the meanwhile, that fact can certainly be taken into consideration in determining the extent of quantum of sentence.

(b) In *Pankajbhai Nagjibhai Patel Vs. The State of Gujarat and Another*, the Apex Court has stated further:

17. In our view this question does not now pose any practical difficulty. Whenever a Magistrate of the First Class feels that the complainant should be compensated he can, after imposing a term of imprisonment, award compensation to the complainant for which no limit is prescribed in Section 357 of the Code.

(c) In *Suganthi Suresh Kumar v. Jagdeeshan* 2002 AIR SCW 298 the Apex Court has elaborated as under:

But in a case where the amount covered by the cheque remained unpaid it should be the look out of the trial Magistrates that the sentence for the offence u/s 138 should be of such a nature as to give proper effect to the object of the legislation. No drawer of the cheque can be allowed to take dishonour of the cheque issued by him lightly. This very object of enactment of provisions like Section 138 of the Act would stand defeated if the sentence is of the nature passed by the trial Magistrate. It is different matter if the accused paid the

amount at least during the pendency of the case.

(d) Recently, the Apex Court in *Musaraf Hossain Khan Vs. Bhagheeratha Engg. Ltd. and Others*, , has further explained the scheme and purpose of the N.I. Act in following words:

It is now well-known that the object of the provision of Section 138 of the Act is that for proper and smooth functioning of business transaction in particular, use of cheques as negotiable instruments would primarily depend upon the integrity and honesty of the parties. It was noticed that cheques used to be issued as a device inter alia for defrauding the creditors and stalling the payments. It was also noticed in a number of decisions of this Court that dishonour of a cheque by the bank causes incalculable loss, injury and inconvenience to the payee and the entire credibility of the business transactions within and outside the country suffers a serious setback. It was also found that the remedy available in a Civil Court is a long drawn process and an unscrupulous drawer normally takes various pleas to defeat the genuine claim of the payee.

4. In view of this, I am of the view that as parties are consenting, and as it is appropriate stage to the J.M.F.C. shall give opportunity and hearing to the parties, while passing the final order after considering the above Apex Court's observations in reference to the grant of compensation in such matters.

5. The object and purpose of N.I. Act, if taken into consideration, it reflects a basic scheme that the party should get the money back as early as possible. So-called civil liability must be discharged by paying back the money. The order of conviction and sentence though, available under the N.I. Act, is no solution to the fact that the parties or the complainant would entitle to claim refund of the money given basically for commercial purpose or such other purpose to the opponent. The conviction of the accused u/s 138 of N. I. Act is no substitute or solution and/or answer to the return of money as per the cheque.

6. In view of this, the order of J.M.F.C., Chalisgaon, is quashed and set aside to the extent of order of sentence and fine. The question of sentence and award of compensation need to be considered by the J.M.F.C. again. The matter is remitted back to the J.M.F.C., Chalisgaon. He should dispose of this matter by giving full opportunity to the parties in this respect. All points in this respect are kept open including statutory rights of the parties.

7. Rule made absolute accordingly, with no order as to costs.