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IN THE HIGH COURT OF BOMBAY AT GOA

**CRIMINAL WRIT PETITION NO. 31 OF 2022
WITH
CRIMINAL REVISION APPLICATION NO. 12 OF 2022**

Mr. Farid Veljee, son of Fatehali Habib Veljee, age 54 years, married, businessman, Indian National, Resident of A/4, Karimabad Co-op. Housing Society Ltd., Campal, Panaji-Goa.

... Petitioner

Versus

1. Mr. Nurallah Kamruddin Veljee, major, married, businessman, Indian National, Resident of 701, "C" Wing, Rizvi Tower, St.Inez, Panaji, Goa and having office at C/o Space Deal, Near Head Post Office, M.G. Road, Panaji, Goa (Presently in custody at Colvale Central Jail, Colvale, Bardez, Goa).

2. State of Goa, Through its Public Prosecutor.

... Respondents

**WITH
CRIMINAL REVISION APPLICATION NO. 398 OF 2022
(F)
CRIMINAL MISC. APPLICATION NO. 399 OF 2022 (F)
IN
CRIMINAL REVISION APPLICATION NO. 398 OF 2022
(F)**

Mr. Nurallah Kamruddin Veljee, major, married, aged 62 years, married, businessman, Indian National, 701 "C" Wing, Rizvi Tower, St.Inez, Panaji, Goa, C/o Space Deal, Near Head Post Office, M.G. Road, Panaji, Goa.

... Applicant

Versus

1. Mr. Farid Veljee, major, married, businessman, Indian National, R/at A/4, Karimabad Co-op. Housing Society Ltd., Campal, Panaji-Goa.
2. The Public Prosecutor, High Court of Bombay at Goa, High Court Building, Panaji, Goa. ... Respondents

Mr. Abhay Nachinolkar, Advocate for the Petitioner/Applicant/Complainant in WPCR No. 31/2022 and CRIR No. 12/2022.

Mr. Rohan Desai, Advocate for the Applicant/Respondent No. 1/Accused in CRIR No. 398/2022 (F) and CRMA No. 399/2022 (F).

Mr. Somnath Karpe, Additional Public Prosecutor for the State/Respondent No. 2 in all matters.

CORAM: BHARAT P. DESHPANDE, J.

DATED: 25th APRIL 2024

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard finally with the consent of parties.
2. Criminal Writ Petition No. 31/2022 is filed challenging the order dated 05.03.2022 passed by the Additional Sessions Judge, Panaji in Criminal Revision Application No. 40/2019 filed by the Petitioner/Complainant thereby challenging the inadequate sentence and compensation passed by the Trial Court. Such

Revision was filed by the Petitioner/Complainant under Section 397 of Cr.P.C. on the premise that there is no Appeal available to the Petitioner/Complainant challenging only inadequate sentence though convicted by the learned Magistrate.

3. Mr. Nachinolkar appearing for the Petitioner/Complainant would submit that the learned Additional Sessions Judge rejected such Revision only on technical ground i.e. availability of Appeal for the Petitioner. He submits that the Complainant under Section 138 of the N.I. Act cannot be equated with a Victim as tried to be projected by the learned Additional Sessions Judge so as to allow such Victim to file an Appeal under Section 372 proviso of Cr.P.C. Mr. Nachinolkar placed reliance on the decision of the Division Bench of this Court in the case of **Kushal Kawaduji Singanjude Vs. Ramnarayan Durgaprasad Agrawal, 2020 (1) Mh.L.J. 748.**

4. Mr. Desai appearing for Respondent No. 1/Accused would submit that Respondent No. 1 preferred a Revision before this Court bearing Criminal Revision Application No. 398/2022 (F) thereby challenging the concurrent findings of the Courts below. He submits that since the Revision is pending before this Court, it would be conflicting, if Criminal Writ Petition No. 31/2022 filed

by the Petitioner/Complainant is considered. However, Mr. Desai appearing for Respondent No. 1/Accused fairly submitted that in view of the observations of the Division Bench of this Court in **Kushal Singanjude** (supra), the Complainant under Section 138 of the N.I. Act cannot be equated with a Victim and accordingly, the Appeal against inadequate sentence is not applicable.

5. Mr. Nachinolkar appearing for the Petitioner/Complainant submits that the Petitioner has filed a separate Criminal Revision Application No. 12/2022 thereby challenging the inadequate sentence passed by the Courts below.

6. Accordingly, both these proceedings are inter connected. However, as rightly pointed out by Mr. Nachinolkar, the observations of the learned Additional Sessions Judge in the impugned order dated 05.03.2022 while rejecting the Revision filed by the Petitioner cannot be endorsed. The provisions of filing an Appeal was presumed by the concerned Revisional Court and only on that premise, the observations are found recorded. It is clear that the provisions of Section 372 of Cr.P.C. are general powers wherein it is stated that no Appeal shall lie from the judgment or order except as provided for by this Code or by any other law for time being in force.

7. The proviso to Section 372 was added in 2009 only allowing the Victim to prefer an Appeal. The observations in the case of **Kushal Singanjude** (supra) stands attracted to the matter in hand wherein a reference was made to the larger Bench and the question referred reads thus:

“Whether the Appeal against acquittal in prosecution for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, would lie under Section 378(4) of the Code of Criminal Procedure or would be as per the proviso below Section 372 of the Code of Criminal Procedure ?”

8. While answering this reference, various other aspects were considered including the definition of the Victim which was added in the year 2009. Finally, the Division Bench answered the said reference in paragraph 37, which reads thus:

“Answer: The Appeal against acquittal in prosecution for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, would lie under Section 378(4) of the Code of Criminal Procedure.”

9. The Division Bench clearly observed while deciding such reference that the Complainant of the offence under Section 138 of the N.I. Act cannot be equated with the word “Victim” as found in Section 372 and thus, the Complainant will not be able to take

recourse to the proviso under Section 372 of Cr.P.C. for challenging any part of the order of the Trial Court, which he is not satisfied including inadequate sentence or compensation.

10. In view of the above observations and the decision in the case of **Kushal Singanjud** (supra), the impugned order dated 05.03.2022 in Criminal Revision Application No. 40/2019 needs to be quashed and set aside.

11. The said impugned order was passed only on the premise that an Appeal is available to the Petitioner/Complainant and therefore, the Revision was not entertained. Admittedly, the learned Additional Sessions Court did not consider the merits and accordingly, rejected the said Revision as not maintainable. In such circumstances, the proper course is only to quash and set aside such order and remand the said Revision to the learned Additional Sessions Judge for the purpose of deciding it on merits.

12. However, the other two connected matters pending with this Court are also required to be taken into account. Admittedly, the learned Additional Sessions Judge passed a separate order on an Appeal filed by the Accused/Respondent No. 1 challenging the conviction passed by the learned Magistrate. The decision of the

learned Additional Sessions Judge is challenged by the present Petitioner in Criminal Revision Application No. 12/2022 whereas the Accused/Respondent No. 1 challenged such decision by filing Criminal Revision Application No. 398/2022 (F).

13. Since this Court has observed that the order dated 05.03.2022 while deciding Criminal Revision Application No. 40/2019 passed by the learned Trial Court needs interference by way of remand, such order will certainly affect the other order passed by the learned Sessions Judge in an Appeal filed by the Accused/Respondent No. 1 as well as the challenge raised in Criminal Revision Application No. 398/2022 (F) filed before this Court by the Accused/Respondent No. 1.

14. Similarly, Criminal Revision Application No. 12/2022 filed by the Petitioner/Complainant will become infructuous. Since the matter is remanded to the learned Sessions Court for deciding the Revision filed by the Petitioner/Complainant on its own merits, which is challenging inadequate sentence, will have a bearing on the proceedings itself.

15. The learned Additional Sessions Judge while deciding Criminal Appeal No. 60/2019 and also the contentions raised by

the Petitioner/Complainant therein, maintained the conviction, however, the sentence has been quashed and set aside and modified.

16. Thus, the operative part of Criminal Appeal No. 60/2019 will also be affected, in case the Criminal Revision Application No. 40/2019 filed by the Petitioner/Complainant is taken up for the purpose of deciding the same. Thus, the observations of the learned Additional Sessions Judge in Criminal Appeal No. 60/2019 insofar as modification of the sentence needs to be interfered with, as it will have a direct bearing and will affect the Revision filed by the Petitioner/Complainant.

17. Similarly, the modification of the sentence passed by the learned Additional Sessions Judge in Criminal Appeal No. 60/2019 needs to be quashed and set aside. The said question of modification of sentence needs to be kept open only after Revision Application No. 40/2019 filed by the Petitioner/Complainant is decided.

18. Mr. Desai submits that Respondent No. 1/Accused has already undergone such a modified sentence and also the sentence in default.

19. However, the question which has been raised by the Petitioner/Complainant revolves around inadequate sentence as well as compensation which needs to be answered in the said Revision on merits.

20. In view of the above observations, the following order is passed:

ORDER

- a. Criminal Writ Petition No. 31/2022 is partly allowed.
- b. The impugned order dated 05.03.2022 in Criminal Revision Application No. 40/2019 is hereby quashed and set aside.
- c. Similarly, the modification of the sentence awarded by the learned Additional Sessions Judge in Criminal Appeal No. 60/2019 is quashed and set aside.
- d. The learned Additional Sessions Judge is directed to decide Criminal Revision Application No. 40/2019 on its own merits, together with the sentence to be awarded in Criminal Appeal No. 60/2019 since the decision in Criminal Revision Application No. 40/2019 will have a direct bearing on the sentence part.

- e. It is made clear that this Court has not decided the present Petition filed by the Petitioner/ Complainant as well as the Revision filed by the Accused/Respondent No. 1, on merits.
- f. The right of the Accused to challenge the order passed by the learned Additional Sessions Judge with regard to the findings on merits in Criminal Appeal No. 60/2019, together with the findings with regard to the sentence along with the decision in Criminal Revision Application No. 40/2019 stands protected.
- g. The Accused shall be entitled to file proceedings against such combined orders including the findings rendered by the first Appellate Court in Criminal Appeal No. 60/2019 thereby confirming the sentence.
- h. Criminal Revision Application No. 40/2019 is restored to the file of the learned Additional Sessions Judge, Panaji with a direction to decide it on its own merits, within a period of three months from the date of receipt of a copy of this order.
- i. The learned Counsel for the parties undertake to cooperate with the Additional Sessions Judge in adhering to the time limit fixed by this Court.
- j. Criminal Revision Application No. 12/2022 filed

by the Petitioner/Complainant and Criminal Revision Application Nos. 398/2022 (F) filed by the Accused/Respondent No. 1 stand disposed of, at present, with liberty to the concerned parties to approach this Court in case any adverse orders are passed, including the findings of the learned Additional Sessions Judge in Criminal Appeal No. 60/2019.

- k. It is made clear that the parties are not allowed to argue the matter afresh before the learned Additional Sessions Judge insofar as the observations on merits and the decision in Criminal Appeal No. 60/2019 are concerned. Liberty is granted only to argue the matter regarding inadequate sentence along with the Revision filed by the Complainant/Petitioner.
- l. The parties shall appear before the learned Additional Sessions Judge, Panaji on 03.05.2024 at 2:30 p.m. and place a copy of the order of this Court before the learned Additional Sessions Judge.
- m. Registry to immediately send the R & P to the learned Additional Sessions Judge.

21. Rule is made absolute in above terms.

22. Accordingly, Criminal Writ Petition No. 31/2022 and Criminal Revision Application No. 12/2022 filed by the Petitioner/Complainant and Criminal Revision Application No. 398 of 2022 (F) filed by the Accused/Respondent No. 1 stand disposed of in the above terms.

23. Pending Criminal Miscellaneous Application No. 399 of 2022 (F) also stands disposed of.

BHARAT P. DESHPANDE, J.

ESHA SAINATH
VAIGANKAR

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