

**Walmik Vs. State of Maharashtra and Another**

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**SooperKanoon Citation :** [sooperkanoon.com/1105072](http://sooperkanoon.com/1105072)

**Court :** Mumbai Aurangabad

**Decided On :** Jan-28-2013

**Judge :** P.V. Hardas

**Appeal No. :** Criminal Revision Application No.310 of 2009

**Appellant :** Walmik

**Respondent :** State of Maharashtra and Another

**Advocate for Pet/Ap. :** Shri. Bhauthankar

**Judgement :**

Oral Judgment:

By consent Criminal Revision Application is admitted and heard finally.

2. This Criminal Revision Application has been filed by the Applicant challenging the judgment of the Chief Judicial Magistrate dated 25th August, 2006 in S.C.C. No.1648 of 1998, convicting the applicant for offence punishable under section 138 of the Negotiable Instruments Act sentencing him to undergo S.I. for 3 months and to pay fine of Rs.20,000/-, in default of payment of fine, to undergo further S.I. for 1 month, with a direction that on realisation of the fine, an amount of Rs.15,000/- be paid to the complainant. The aforesaid judgment of the trial Court was confirmed in Appeal by the Adhoc Additional Sessions Judge, Parbhani by judgment dated 31st October, 2009 in Criminal Appeal NO.66 of 2006.

3. Shri Bhauthankar, learned counsel for the Applicant has urged before me that indisputedly the complainant has received amount of Rs. 15,000/- as directed by the trial Court. The learned counsel for the Applicant further states that the Applicant does not challenge the judgment of the two Courts below on merits but restricts the submission in respect of the sentence which is imposed on the applicant. It is urged before me that the Applicant was prosecuted and was convicted in S.C.C. No.1248 of 1996. Both the Appeals came to be dismissed on the same day and the Applicant has already undergone 23 days of imprisonment in the other mater. It is further urged before me that the cheque which was issued by the applicant was towards the discharge of the arrears of loan which the applicant had obtained from Respondent No.2. The Applicant is stated to be aged about more than 70 years and, therefore, the submission is made that the applicant be released on the payment of fine instead of imposing the substantive sentence of imprisonment.

4. I have heard learned counsel for the Applicant and learned counsel for Respondent No.2. It is not disputed before me that the applicant is aged more than 70 years. It is also not disputed before me that the amount of Rs.15,000/- awarded by the trial Court as compensation to the complainant, which represented the value of the cheque, has been received by the complainant. Looking to the age of the applicant and fact that the complainant has already received the value of the cheque and since the learned counsel for the complainant does not dispute the submission advanced before me by the learned counsel for the Applicant, according to me interest of justice would be subserved by setting aside the sentenced of imprisonment awarded by the trial Court. Accordingly, this Criminal Revision Application is partly allowed. Conviction of the applicant for offence punishable under section 138 of the Negotiable Instruments Act is confirmed. The sentence awarded by the trial Court i.e. S.I. of 3 months is hereby quashed and set aside while maintaining the sentence of fine imposed by the trial Court as well as the direction of the trial Court for payment of compensation. Criminal Revision Application is accordingly partly allowed.