IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL APPEAL NO. 320 OF 2017

...

Prashant s/o. Himmatrao Jawarkar,
Aged about 44 years, Occ.: Business,
R/o. Sukhada Apartment, Sawant wadi,
Ranpise Nagar, Akola, Distt. Akola.

... **APPELLANT**

- - V E R S U S - -

Dr. Ganesh s/o. Pandurang Vasu,
Aged Major, Occu: Medical Practitioner,
R/o. Om Sai Medicals,
Behind S.T. stand, Mutthe layout,
Siddhivinayak Bal Rugnalaya Critinal Care,
Buldana.

... **RESPONDENT**

Mr. N.B. Jawade, Advocate for the Appellant.

None for the Respondent.

CORAM : M.M. NERLIKAR, J.

Judgment is reserved on 11/11/2025 .

Judgment is pronounced on 18/11/2025 .

JUDGMENT

Heard the learned counsel for the appellant.

2. **Admit.**

3. The present appeal challenges the judgment and order dated 16/03/2017 passed by the learned Judicial Magistrate, First Class, Court No.5, Akola, wherein, the accused was acquitted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, however, the appellant was directed to pay compensation of Rs.25,000/- to the accused under Section 250(2) of the Code of Criminal Procedure, 1973, and in default of payment of compensation amount the appellant was directed to undergo simple imprisonment for 15 days under Section 250(3) of the Code of Criminal Procedure.

4. This Court by an order dated 07/07/2017, rejected the application seeking leave to file appeal to the extent of acquittal of the non-applicant/accused. However, the application was allowed only to the extent of challenging the order giving a direction to the applicant/complainant to give compensation to the non-applicant/accused. Accordingly, appeal was admitted only to the extent of granting compensation to the present non-applicant/accused. It further appears that ad-interim relief was granted in favour of the appellant by the same order, i.e., order dated 07/07/2017.

5. I have heard the learned counsel for the appellant, however, none appears for the respondent.

6. The learned counsel for the appellant submits that the Judicial Magistrate First Class, Akola, erred in granting compensation as mere failure to prove the case by itself is not sufficient to direct payment of compensation under Section 250 of the Cr.P.C. He further submits that the signature on the cheque was not disputed by the respondent. The cheque bearing No.232800 was issued by the respondent and when it was presented it was dishonored. Thereafter, a return memo of State Bank of India was also placed on record, not only that, copy of demand notice, postal acknowledgment, postal receipt, reply of accused and receipts were placed on record in order to prove the case, however, if the complainant failed to prove the case that by itself does not give rise to grant of compensation by the complainant. He further submits that the return memo was placed on record of drawee bank, i.e., State Bank of India, however, he submits that the explanation was given by the complainant by stating that cheque at Exh.20 was forwarded by the Nishant Pat Sanstha to their authorized Bank, i.e., Peoples Co-operative Bank Ltd. The Peoples Co-operative Bank is linked with Nishant Pat Sanstha. Moreover, the date mentioned on the return memo, i.e., Exh.21 of the Drawee bank of SBI is written in Marathi as 24/03/2023, and accordingly, submits that what endorsement has been put at the back side of the cheque is not in the hands of the complainant and submits that the complainant has duly proved that the cheque has been signed by the respondent herein. He further submits that to invoke provisions of Section 250 of Cr.P.C., the Court has to see whether there are reasonable ground for making the accusation against the accused or not. However, it cannot be equated with the acquittal on the ground of not proving the case by the complainant / informant. Accordingly, he submits that the Trial Court has wrongly invoked Section 250 of the Cr.P.C. and failed to apply Section 250 in its true perspective. He further submits that the Trial Court has erred in directing grant of compensation by the appellant to the respondent and ultimately prayed to allow the Appeal.

7. Though on behalf of respondent, Mr. Deshpande, put in his appearance, but during the course of hearing he remained absent. The matter pertains to the year 2017. The original proceedings are of 2013, and therefore, I though it fit to proceed with the matter in the absence of learned counsel for the respondent.

8. After going through the record and proceedings and after hearing the learned counsel for the appellant, it could be gathered from the record that the grounds on which the compensation was awarded to the respondent, which is to be paid by the complainant under Section 250 of Cr.P.C. are that *"no ground appears to conclude that the complainant's case has some truth in his case, except to collect money from the accused."*, *"complainant has initiated the proceeding without any reasonable ground as there was absence of return memo, the endorsement dtd. 23/03/2013 of a stranger bank on the back side of the cheque, created doubt."*, and *"by initiating such proceeding without having justified documents, the accused has abused the process of court. He has not only consumed the long period of the Trial Court, but also of the Hon'ble Sessions &*

High Court." Therefore, the Trial Court accordingly granted Rs.25,000/- as compensation to the accused.

9. It is necessary to reproduce Section 250 of Cr.P.C. which reads thus:-

> *"250. Compensation for accusation without reasonable cause.*
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> *1. If, in any case instituted upon complaint or upon information given to a police officer or to a Magistrate, one or more persons is or are accused before a Magistrate of any offence triable by a Magistrate, and the Magistrate by whom the case is heard discharges or acquits all or any of the accused, and is of opinion that there was no reasonable ground for making the accusation against them or any of them, the Magistrate may, by his order of discharge or acquittal, if the person upon whose complaint or information the accusation was made is present, call upon him forthwith, to show cause why he should not pay compensation to such accused or to each or any of such accused when there are more than one; or, if such person is not present, direct the issue of a summons to him to appear and show cause as aforesaid.*
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> *2. The Magistrate shall record and consider any*

cause which such complainant or informant may show, and if he is satisfied that there was no reasonable ground for making the accusation, may, for reasons to be recorded, make an order that compensation to such amount, not exceeding the amount of fine he is empowered to impose, as he may determine, be paid by such complainant or informant to the accused or to each or any of them.

3. The Magistrate may, by the order directing payment of the compensation under sub-section (2), further order that, in default of payment, the person ordered to pay such compensation shall undergo simple imprisonment for a period not exceeding thirty days.

4. When any person is imprisoned under sub-section (3), the provisions of Sections 68 and 69 of the Indian Penal Code (45 of 1860) shall, so far as may be, apply.

5. No person who has been directed to pay compensation under this section shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made or information given by him:

Provided that any amount paid to an accused person under this section shall be taken into account in awarding compensation to such person in any subsequent *civil suit relating to the same matter.*

6. A complainant or informant who has been ordered under sub-section (2) by a Magistrate of the second class to pay compensation exceeding one hundred rupees, may appeal from the order, as if such complainant or informant had been convicted on a trial held by such Magistrate.

7. When an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub-section (6), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided; and where such order is made in a case which is not so subject to appeal the compensation shall not be paid before the expiration of one month from the date of the order.

8. The provisions of this section apply to summons-cases as well as to warrant-cases."

So as to interpret the aforesaid provision, it would be useful to refer to the judgment delivered by the Supreme Court in the case of ***State of Rajasthan VS Jainudeen Shekh and Another,*** **(2016) 1 SCC 514.** Paragraph Nos. 8 to 14 are reproduced below:-

> *"8. Section 250 of the Code confers powers on the Magistrate to grant compensation on certain conditions being satisfied. A procedure has been engrafted in the said provision. There are certain cases in which the learned Sessions Judge can grant compensation. In this context we may refer with profit to the decision in Daulat Ram v. State of Haryana[1]. The appellant therein was convicted by the learned Additional Sessions Judge under Section 25 of the Arms Act, 1959 read with Section 6(1) of the Terrorist & Disruptive Activities (Prevention) Act, 1985 (for short, 'TADA'). The defence taken by the accused was that he had been falsely implicated at the instance of one Hans Raj Lambardar of the village. He had examined four witnesses in his defence. He was acquitted under Section 6 of the TADA but convicted under Section 25 of the Arms Act. The Court analyzing the evidence on record and taking note of the plea of the defence, dislodged the judgment of conviction and while doing so, this Court opined that:-*
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> > *"....It is unfortunate that the police officers, namely, Head Constable, Randhir PW 2 and the then Head Constable Jai Dayal, PW 3 foisted a false case on the appellant for reasons best known to them, which is a very serious matter. We are informed that the appellant was in custody for a few days in connection*

with this case. We, therefore, direct the respondent-State to pay a sum of Rs. 5000 as compensation to the appellant within two months. The respondent-State may however recover the said amount from the police officials, Randhir PW 2 and Jai Dayal, PW 3 (Rs. 2500 each), who are responsible for false implication of the appellant."

9. In Mohd. Zahid v. Govt. of NCT of Delhi[2] *, the appellant had preferred an appeal under Section 19 of the TADA. The designated court had found him guilty and convicted him for the offence under Section 5 of TADA and sentenced him to suffer rigorous imprisonment for five years and to pay a fine of Rs.1,000/- and, in default of payment of fine, to undergo rigorous imprisonment for two months more. The Court allowed the appeal and recorded an order of acquittal. In course of analysis, the Court has opined that certain documents had been interpolated, the evidence of certain witnesses was absolutely false and that the appellant therein made a victim of prolonged illegal incarceration due to machination of PWs 5 and 6 and other police personnel and accordingly directed payment of Rs.50,000/- as compensation.*

10. In this context reference to certain other decisions would be appropriate. In State, represented by

Inspector of Police and others v. N.M.T. Joy Immaculate[3] *, a three-Judge Bench was dealing with the judgment and order passed by the learned Single Judge of the High Court of Madras in a Criminal Revision which was allowed and revision was disposed of with certain directions. The High Court had granted Rs.1 lakh compensation on the basis of an affidavit. G.P. Mathur, J., speaking for the learned Chief Justice and himself, after quashing the order of the High Court has opined that:-*

> *" The High Court has also awarded Rs. 1 lakh as compensation to the accused on the ground that she was illegally detained in the police station and the police personnel committed acts of molestation, obscene violation, etc. It is noteworthy that after investigation, the police has submitted charge-sheet against accused Joy Immaculate. Her application for bail was rejected by the learned Sessions Judge and thereafter by the High Court on 18-1-2002 prior to the decision of the revision. There is absolutely no justification for awarding compensation to a person who is facing prosecution for a serious offence like murder even before the trial has commenced. This direction, therefore, deserves to be set aside."*

Dr. A.R. Lakshmann, J. in his concurring *opinion has laid down:-*

> *"Above all, the learned Judge has committed a grave error in awarding a compensation of Rs 1 lakh on the ground that the police personnel committed acts of obscene violation, teasing the respondent herein. The learned Judge has relied upon only on the basis of the affidavit filed in the case for coming to the conclusion and also on the basis of the assumption that the respondent was not involved in the incident which will foreclose the further enquiry ordered by the learned Judge in the matter. There is no justification for awarding compensation to a person who is facing prosecution for a serious offence like murder even before the trial has started."*

11. In this context, we may usefully refer to a two-Judge Bench decision in Hardeep Singh v. State of Madhya Pradesh[4] . In the said case, the appellant was engaged in running a coaching centre where students were given tuition to prepare them for entrance tests for different professional courses. The appellant was arrested and a case under Section 420 read with Section 34 IPC and other sections was instituted. He was brought to the police station in handcuffs and his photographs in handcuffs appeared in the local newspapers. The trial went on for several years and eventually, he was acquitted after 12 *years. Thereafter he filed a complaint before the Magistrate which was dismissed for lack of sanction. The High Court being moved had held that complaint was not maintainable and dismissed the same in limini. Thereafter, the victim moved the Government for grant of sanction under Section 197 CrPC for prosecuting the Collector and other government servants which was refused. The said order of refusal came to be assailed in W.P. No.4777 of 2007. The writ petition was dismissed by the High Court. On an intra-court appeal preferred, the High Court dismissed the same.*

12. Be it stated, after the acquittal, the appellant had filed writ petition no. 4368 of 2004 contending, inter alia, that he was taken to the police station and was kept there in custody in the night handcuffed by the police without there being any valid reason and his photographs in handcuffs in daily newspapers were published as a consequence of which his elder sister who loved him like a son, died due to shock. It was also contended that the prosecution knew from the beginning that the cases registered against him were false and it purposefully caused delay in conclusion of the trial causing great harm to his dignity and reputation and violating his fundamental right to speedy trial guaranteed under Article 21 of the Constitution. A learned Single Judge of the High Court had *admitted the writ petition on the limited question of grant of compensation to the appellant for the delay in conclusion of the criminal case against him. Another Single Judge who finally heard the matter opined that there was no case for compensation. In intra-court appeal, the Division Bench reversed the same and granted compensation of Rs.70,000/- which was enhanced by this Court to Rs.2 lakhs. The analysis made by the Division Bench which has been approved by this Court is to the following effect:-*

> *" The Division Bench further held that there was no warrant for putting the appellant under handcuffs. His handcuffing was without justification and it had not only adversely affected his dignity as a human being but had also led to unfortunate and tragic consequences."*

And while enhancing the compensation, the Court held that:-

> *"..... we find that in the light of the findings arrived at by the Division Bench, the compensation of Rs 70,000 was too small and did not do justice to the sufferings and humiliation undergone by the appellant."*

13. Regard being had to the aforesaid enunciation of law, the factual matrix of the case at hand is required to be appreciated. On a close scrutiny of the judgment of the *learned trial Judge, it is evident that he has been guided basically by three factors, namely, that the State Government has not established Forensic Science Laboratories despite the orders passed by this Court; that there has been delay in getting the seized articles tested; and that the seizing officer had not himself verified by using his experience and expertise that the contraband article was opium. As far as the first aspect is concerned, it is a different matter altogether. As far as the delay is concerned that is the fulcrum of the reasoning for acquittal. It is apt to note that the police while patrolling had noticed the accused persons and their behaviour at that time was suspicious. There is nothing on record to suggest that there was any lapse on the part of the seizing officer. Nothing has been brought by way of evidence to show that the prosecution had falsely implicated them. There is nothing to remotely suggest that there was any malice. The High Court, as is noticed, has not applied its mind to the concept of grant of compensation to the accused persons in a case of present nature. There is no material whatsoever to show that the prosecution has deliberately roped in the accused persons. There is no malafide or malice like the fact situation which are projected in the case of Hardeep Singh (supra). Thus, the view expressed by the learned trial Judge is absolutely* *indefensible and the affirmance thereof by the High Court is wholly unsustainable.*

14. In view of the foregoing analysis, the appeal is allowed and the order of the trial Judge granting compensation and that of the High Court giving stamp of approval to the same are set aside. "

It would also be useful to refer to the judgment of the Supreme Court in the case of ***Indian Oil Corpn. VS NEPC India Ltd. And Others,*** **(2006) 6 SCC 736,** Paragraph No.14 is reproduced below:-

"14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 CrPC more frequently, where they discern malice or frivolousness

or ulterior motives on the part of the complainant. Be that as it may."

From the aforesaid judgments, the following points can be culled out so as to invoke Section 250 Cr.P.C. :-

1] That there is no material against the accused to initiate the proceedings;

2] It is necessary to show that the complainant has initiated the proceedings against the accused maliciously, i.e., with malafide intention or malice meaning thereby there should be malicious prosecution; or

3] The proceedings initiated must be frivolous or initiated with ulterior motive on the part of the complainant.

10. Taking into consideration the exposition of law of the Supreme Court and after considering Section 250 of Cr.P.C., it is necessary to appreciate the basic facts of the present case.

S.C.C. No. 2110/2013 was registered by the present appellant – Prashant Himmatrao Jawarkar against the present respondent – Dr. Ganesh Pandurang Vasu for the offence punishable under Section 138 of the N.I. Act. It is alleged that the respondent is a medical practitioner / Doctor. It is further alleged that the complainant and accused are well acquainted with each other. The respondent was in need of money, and therefore, a request was made to complainant to a give hand loan of Rs.3,00,000/-. Considering the relationship between them, the complainant gave a hand loan of Rs. 3,00,000/-. The accused / respondent assured to complainant / appellant that he will repay the said hand loan as early as possible, and accordingly, the respondent towards discharge of the said existing legal liability issued a cheque on 20/03/2013 bearing No. 232800 of Rs.3,00,000/- drawn on State Bank of India in favour of the complainant. When the cheque was presented for encashment through his Banker - Nishant Multi State Co-operative Credit Society Ltd., Akola Branch, Akola on 22/03/2013, the said cheque dishonoured and was returned unpaid by the SBI by its cheque return memo dated 22/03/2023 for the reason "Funds Insufficient". Accordingly, the information was received by the complainant on 22/03/2023 itself. It further appears that this fact was informed to the respondent / accused, however, the respondent has not paid any heed. Accordingly, the appellant issued legal notice through Advocate by R.P.A.D. on 20/04/2013 calling the accused to make the payment of cheque amount within 15 days from the receipt of the said notice. The said notice was received on 22/04/2013 by the respondent, but the respondent failed to comply with the said notice, and accordingly, the complaint was filed for the offence punishable under Section 138 of the N.I. Act.

11. It appears from the record that evidence was recorded by the Trial Court. The defence of the respondent / accused was that the accused / respondent was not acquainted with the complainant. The complainant has misused the cheque by joining hands with his friend Vinod Meshram. It further appears that the respondent denied the fact that he has taken a hand loan from the appellant and he has also denied issuance of cheque in favour of the appellant. It is his further defence that he is acquainted with one Vinod Meshram who was in need of money, and therefore, he has availed loan facility for Vinod Meshram from Akshay Vyavsaik Nagri Sahakari Pat Sanstha Ltd., Akola. For availaing the loan he has mortgaged the property of Vinod Meshram and for the security purpose, the respondent has kept the blank cheque of SBI with the said Pat Sanstha. The repayment was done by the Vinod Meshram himself, however, after repayment of the loan, one of the blank cheque was taken by Vinod Meshram which was misused in collusion with the complainant, and accordingly, he has placed reliance on the documents at Exh.61 to 75. Not only that, the respondent has also examined one of the employee of the Pat Sanstha, namely, Makarand Korranne. After going through the entire evidence, it appears that the signature on the cheque was not denied by the respondent. It is further to be noted that witness, Makarand Korranne, who was the manager of Akshay Vyavsaik Nagri Sahakari Pat Sanstha admitted that as per the rules Pat Sanstha cannot take blank cheques from the borrowers. It further appears from the evidence of Makarand that seven cheques were returned to the respondent when he was manager of the Pat Sanstha.

12. Now considering the above evidence, the only question before me is whether there are reasonable grounds to file the complaint by the complainant under Section 138 of the N.I. Act against the respondent and whether the Trial Court is justified in invoking Section 250 of the Cr.P.C. To answer this some important factors are necessary to be taken into consideration. The evidence on record goes to show that the cheque bearing No.232800 at (Exh.20) is having signature of the respondent, which is admitted in evidence by the respondent. There is cheque return memo of SBI bank at

Exh.21, demand notice at Exh.22, Postal Acknowledgment at Exh.23, Postal Receipt at Exh.24, reply of accused to the notice at Exh.25 and some receipts at Exh.26 & 27. Therefore, all these documents goes to show that cheque was having signature of the respondent, which was presented to the Nishant Pat Sanstha by the complainant. Therefore, the fact remains that in order to proceed under Section 138 of the N.I. Act, there are reasonable grounds.

13. It is also a matter of fact that the said cheque was dishonored for "Insufficient funds". Further there was cheque return memo of the SBI Bank, demand notice was served, service of notice is also placed on record, therefore, there was procedural compliance and as the cheque dishonoured, the case was filed by the complainant due to the fact that respondent has failed to repay the hand loan amount. Therefore, it cannot be said that there are no reasonable grounds for initiation of the proceedings under Section 138 of N.I. Act. It is to be kept in mind that acquittal from the case by itself would not be sufficient to invoke the provisions of Section 250 of the Cr.P.C. as was observed by the Supreme Court in the case of ***State of Rajasthan VS Jainudeen Shekh (supra),*** there should be malicious prosecution. So far as malicious prosecution is concerned, absolutely there is no finding to that effect. On the contrary, the Trial Court has said that the complainant has misused the cheque, however, there are certain findings which are on the basis of surmises and presumption, so far as invoking provision of Section 250 of Cr.P.C. is concerned. It is further to be noticed that there is no evidence in regard to issuance of blank cheque to the Pat Sanstha as security, however, the Court has observed that *"in the light of these factors it is also proved by the accused that he had given the blank cheque to the pat sanstha as security."* On the contrary, the witness Makarand Korranne, in his cross-examination admitted that Pat Sanstha is not allowed to take blank cheque from the borrowers. Further, Trial Court has given much importance while awarding

Rs.25,000/- to the accused on the fact that the return memo of Nishant Credit Society is not placed on record. However, only return memo of drawee Banker, i.e., SBI Bank is placed on record by the complainant and on the back side of the cheque at Exh.20, the endorsement is seen as of the Peoples Co-operative Bank Ltd., Hingoli, Branch Akola, which is dated 22/03/2013. For this the explanation was called from the complainant before invoking the provision of Section 250 of Cr.P.C. Accordingly, the complainant has given his explanation and submitted that the cheque at Exh.20 was forwarded by the Nishant Pat Sanstha to their authorised Bank, i.e., Peoples Co-operative Bank. This Peoples Co-operative Bank is linked with Nishant Pat Sanstha. Moreover, the date mentioned on the return memo at Exh.21 of the drawee bank of SBI is written in Marathi as 24/03/2013, and accordingly, the learned counsel for the appellant submits that it is not in the hands of the complainant once he has presented the cheque for encashment to the Nishant Pat Sanstha what is written at the back side. However, he submits that the signature on the cheque was not denied by the respondent.

14. There may be discrepancies in the evidence, there may be shortfalls in the case of the complainant or there may be fact that the complainant fails to prove the case. These factors would not lead to invoke Section 250 of Cr.P.C. Further the proceedings may fail due to N-number of reasons, however, for invocation of Section 250 of Cr.P.C, as was observed *supra,* there should be malicious prosecution and there should be finding to that effect while rendering the judgment. The entire tenor of the Judgment depicts that the Court has culled out major discrepancies which are as under:-

> *"50] In short the following major discrepancies are found in the complainant's case as;*
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> *i) The date on which the consideration amount is handed over is missing.*
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> *ii) The reasons for delivery of hand loan as described by the complainant are not believable when the accused himself is well off as evident from record.*

iii) The cheque return memo of Nishant Multi-State Co-operative Credit Society Ltd., Akola, Branch Ranpise Nagar, Akola is not placed on record consequently, it is not proved.

iv) Name of the Payee's bank is not mentioned in the return memo of drawer bank i.e. S.B.I.

v) On the back side of the cheque, the name of stranger bank is written for clearance having dtd. 23.03.2013 which is one day after, when as per the complainant, cheque returned dishonoured on 22.03.2013. how it does happened that is not focused by the complainant.

vi) Alleged cheque is of subsequent dt. 20.03.13, when the accused has already made his loan account NIL on 20.01.13."

15. Therefore, from these major discrepancies one can come to the conclusion that the complainant has failed to prove his case, however, it cannot lead to invoke Section 250 of Cr.P.C. Not only that from the entire evidence, I do not find that the complaint was lodged with *mala fide* intention or there is malice on the part of the complainant to prosecute the accused for the offence punishable under Section 138 of the

Negotiable Instruments Act, 1881. Therefore, considering the above facts and circumstances of the case, the findings arrived at by the Trial Court to the extent of granting compensation by the complainant / present appellant – Prashant Himmatrao Jawarkar the accused–Dr. Ganesh Pandurang Vasu, does not sustain in law, and therefore, the appeal deserves to be allowed to that extent only. Therefore, the finding only to the extent of invoking Section 250 of the Cr.P.C. is perverse. Hence, the following order:-

<u>O R D E R</u>

(i) The Appeal is **partly allowed;**

(ii) The order dated 16/03/2017 passed by Judicial Magistrate First Class, Court No.5, Akola, in S.C.C. No. 2110/2013 is hereby quashed and set aside only to the extent of awarding compensation of Rs.25,000/- to the accused from the complainant;

(iii) The appeal is disposed of, accordingly.

[<u>M. M. NERLIKAR, J</u>]