

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

REVISION APPLICATION NO. 235 OF 2025

Shri. Jitendra Pahilajray Lalchandani ...Applicant

Versus

Shri. Vinod Prakash Mahesha & Anr. ...Respondents

WITH
INTERIM APPLICATION NO. 1989 OF 2025
IN
REVISION APPLICATION NO. 235 OF 2025
WITH
REVISION APPLICATION NO. 226 OF 2025
WITH
INTERIM APPLICATION NO. 2170 OF 2025
IN
REVISION APPLICATION NO. 226 OF 2025
WITH
REVISION APPLICATION NO. 227 OF 2025
WITH
INTERIM APPLICATION NO. 2171 OF 2025
IN
REVISION APPLICATION NO. 227 OF 2025
WITH
REVISION APPLICATION NO. 234 OF 2025
WITH
INTERIM APPLICATION NO. 1988 OF 2025
IN
REVISION APPLICATION NO. 234 OF 2025
WITH
REVISION APPLICATION NO. 236 OF 2025
WITH
INTERIM APPLICATION NO. 1990 OF 2025
IN
REVISION APPLICATION NO. 236 OF 2025
WITH
REVISION APPLICATION NO. 237 OF 2025

WITH
INTERIM APPLICATION NO. 1994 OF 2025
IN
REVISION APPLICATION NO. 237 OF 2025
WITH
REVISION APPLICATION NO. 238 OF 2025
WITH
INTERIM APPLICATION NO. 1995 OF 2025
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REVISION APPLICATION NO. 238 OF 2025
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REVISION APPLICATION NO. 239 OF 2025
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INTERIM APPLICATION NO. 1964 OF 2025
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REVISION APPLICATION NO. 239 OF 2025
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REVISION APPLICATION NO. 240 OF 2025
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INTERIM APPLICATION NO. 1996 OF 2025
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REVISION APPLICATION NO. 240 OF 2025
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INTERIM APPLICATION NO. 1997 OF 2025
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INTERIM APPLICATION NO. 1998 OF 2025
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REVISION APPLICATION NO. 242 OF 2025
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REVISION APPLICATION NO. 246 OF 2025
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INTERIM APPLICATION NO. 2000 OF 2025
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REVISION APPLICATION NO. 246 OF 2025
WITH
REVISION APPLICATION NO. 244 OF 2025

WITH
INTERIM APPLICATION NO. 1999 OF 2025
IN
REVISION APPLICATION NO. 244 OF 2025
WITH
REVISION APPLICATION NO. 250 OF 2025
WITH
INTERIM APPLICATION NO. 2014 OF 2025
IN
REVISION APPLICATION NO. 250 OF 2025

Mr. Sumedh Shriram Modak, learned Advocate for the Applicant.
Mrs. Geeta P. Mulekar, learned Addl.PP for the State/Respondent.
Mr. P. C. Mohite, learned Advocate for Respondent No. 1/Original Complainant.

CORAM : ASHWIN D. BHOBE, J.
DATE : 17th OCTOBER, 2025.

P.C. :

1. Heard Mr. Sumedh Shriram Modak, learned Advocate for the Applicant, Mr. Mohite, learned Advocate for Respondent No. 1 and Mrs. Geeta P. Mulekar, learned Addl.PP for the State/Respondent. Learned Advocates jointly submit that since the points/issues raised in all these Criminal Revision Applications are similar, all these Criminal Revision Applications can be heard together and disposed off by a common order. They submit that Criminal Revision Application No. 235 of 2025 be considered as the lead Criminal Revision Application. In the light of the above request, this Court has proceeded to hear all these Criminal Revision Applications together and the same are being disposed of by this common order.

2. Respondent No. 1 (Complainant) instituted Summary

Criminal Case No. 2988 of 2006 before the Court of Judicial Magistrate First Class, Ulhasnagar, against the Applicant (Accused) for the offences punishable under Section 138 of the Negotiable Instruments Act, 1881 (“NI Act”).

3. Vide judgment and order dated 25th November, 2019, the 3rd Judicial Magistrate First Class, Ulhasnagar, convicted the Applicant for the offences punishable under Section 138 of NI Act and sentenced the Applicant to undergo simple imprisonment for one month and to pay an amount of Rs. 3,00,000/- towards compensation under Section 357(3) of the Code of Criminal Procedure, 1973 (“Cr.P.C.”) within a period of 2 months, failing which to undergo simple imprisonment for one month.

4. Dissatisfied with the judgment and order dated 25th November, 2019, Applicant filed Criminal Appeal No. 06 of 2022 before the Sessions Court at Kalyan, District-Thane. Along with the said Criminal Appeal, Applicant filed an Application under Section 389 of the Cr.P.C. at Exhibit-4 seeking suspension of sentence and Application at Exhibit-6 seeking release on bail pending the Criminal Appeal.

5. Vide order dated 29th February, 2020, the Additional Sessions Judge allowed the Applications at Exhibits-4 & 6, thereby suspending the sentence imposed by judgment and order dated 25th November, 2019 and released the Applicant on bail, subject to the Applicant depositing 30% of the amount of compensation before the Court within 15 days.

6. The condition of deposit of 30% of the compensation amount

was relaxed at the instance and request of the Applicant vide order dated 13th January, 2023, by making the same as 20% deposit of the compensation amount. Undertaking of the Applicant was recorded by the Additional Sessions Judge in its order dated 13th January, 2023, which reads as follows :-

“.....The appellant in person gave undertaking before this Court that within shortest period, he shall deposit the amount. The undertaking is accepted, the appellant is directed to deposit 20% of the total amount of compensation in all cases within the period of two months and out of the total amount, he shall deposit 50% amount within a period of one month from today and remaining 50% amount in the next month i.e. the total amount within the period of two months from today. The applications filed by the appellant in all these appeals for relaxation of the compensation amount accordingly stand allowed.”

7. Applicant failed to comply with the order dated 13th January, 2023, as a result of which the Additional Sessions Judge vide order dated 7th February, 2024 vacated the order of suspension of sentence and directed the Judicial Magistrate First Class to take action in accordance with law.

8. Vide order dated 28th February, 2025, the Additional Sessions Judge dismissed the Appeals filed by the Appellant. Order dated 28th February, 2025 is extracted hereinbelow :-

**“COMMON ORDER BELOW EXH. 1 IN CRI. APPEAL NO. 3/2020
TO 16/2020**

All these appeals are filed by the appellant/accused for challenging the judgment and order of Trial Court in which the appellant/accused came to be convicted for the offence punishable under Sec. 138 of N.I. Act. Immediately, he filed application for suspending the sentence. As per Court suspended the sentence with

condition to deposit 20% amount out of compensation amount within stipulated period.

Despite of sufficient opportunity from time to time, appellant/accused failed to deposit 20% amount of compensation. Hence, by passing specific order by my Ld. predecessor, order of suspension in SCC no. 3092/2006, 2984/2006, 2986/2006, 2987/2006, 2988/2006, 3578/2006, 2989/2006, 3459/2006, 3579/2006, 3094/2006, 3093/2006, 3658/2006, 126/2007 and 127/2007 was vacated and Trial Court informed for necessary action on 7/2/2024. Since then till today appellant not deposited single rupee in this proceeding, hence, on last day Advocate for the respondent filed application for dismissal of the appeal.

I have called say from the appellant/accused, but today appellant is absent. His advocate filed his say and prayed to give some time. But admittedly, this appeal are pending since the year 2020. Approximately near about 5 years old. Appellant neither deposited the amount nor argued the appeal. In such circumstances, I have no alternative but to dismiss the appeal. Hence, I proceed to pass following order :

Order

1. *Appeals are dismissed.*
2. *Ld. Lower Court be informed accordingly.”*

9. Common Order dated 28th February, 2025, passed by the Additional Sessions Judge dismissing the Appeals filed by the Applicant, are subject matter of the present Revision Applications.

10. Mr. Modak, learned Advocate for the Applicant submits that non-compliance of the order of deposit of the amount directed by the Additional Sessions Judge vide order dated 29th February, 2020 read with the order dated 13th January, 2023, could not be a ground for dismissal of the substantive Appeal filed by the

Applicant under Section 374 of the Cr.P.C. He submits that the Appeal filed by the Appellant against his conviction under Section 374 of the Cr.P.C., was a statutory right conferred on the Applicant, which right is not dependent on breach or non-compliance of conditions imposed while suspending sentence under Section 398 of the Cr.P.C. He submits that the Additional Sessions Judge ought to have granted the request of the Applicant and adjourned the matter for arguments. He submits that the order dated 28th February, 2025 dismissing the Appeal without it being heard on merits, has caused grave and serious prejudice to the Applicant.

11. Mr. Mohite, learned Advocate for Respondent No. 1 submits that the Appeals were filed in the year 2020 and were pending for 5 years. He submits that the Applicant neither complied with the conditions imposed while suspending the sentence nor with the oral undertaking given by him, as recorded in the order dated 13th January, 2023 as such no indulgence is warranted to such a litigant. He submits that the Applicant having failed to comply with the order passed by the Appellate Court while suspending the sentence and further failure to remain present before the Court on 28th February, 2025, left no option to the Additional Sessions Judge but to dismiss the Appeals. He submits that Respondent No. 1 is made to suffer by the Applicant as Respondent No. 1 is denied of his lawful dues payable by the Applicant which are subject matter of the cheque/s in the Appeal/s. He submits that grave prejudice and loss would be caused to Respondent No. 1 if the Criminal Revision Applications are entertained and therefore, he prayed for dismissal of the Criminal Revision Applications.

12. Perused the records with the assistance of Advocates.

13. Perusal of the order dated 28th February, 2025 indicates the Appeals filed by the Appellant being dismissed on two counts, *firstly*, absence of the Appellant and *secondly* for non-deposit of the amount.

14. Question therefore for consideration in this Revision Applications is “whether the statutory Appeals filed by the Applicant under Section 374 of the Cr.P.C. could be dismissed in view of the absence of the Appellant?” and “whether non-compliance of the condition of deposit imposed while suspending the sentence under Section 389 of the Cr.P.C., can be a ground for dismissal of the statutory Appeals?”.

15. The Hon’ble Supreme Court in the case of ***Dilip S. Dahanukar v/s. Kotak Mahindra Co. Ltd.***¹, in paragraph no. 12 has held as follows :-

“12. An appeal is indisputably a statutory right and an offender who has been convicted is entitled to avail the right of appeal which is provided for under Section 374 of the Code. Right of appeal from a judgment of conviction affecting the liberty of a person keeping in view the expansive definition of Article 21 is also a fundamental right. Right of appeal, thus, can neither be interfered with or impaired, nor can it be subjected to any condition.”

16. The Hon’ble Supreme Court in the case of ***Surinder Singh Deswal v/s. Virender Gandhi and Another***², in paragraph 20 has observed as follows :-

1. (2007) 6 SCC 528.

2. (2020) 2 SCC 514.

“20. It is for the appellate court who has granted suspension of sentence to take call on non-compliance and take appropriate decision. What order is to be passed by the appellate court in such circumstances is for the appellate court to consider and decide. However, non-compliance of the condition of suspension of sentence is sufficient to declare suspension of sentence as having been vacated.”

17. In the instant case the Additional Sessions Judge vide order dated 7th February, 2024 had vacated the order suspending the sentences in the Appeals filed by the Applicant and directing the Court of Judicial Magistrate First Class to take appropriate action in accordance with law. Thus, the Additional Sessions Judge had exercised his discretion and declared the suspension of sentence, as vacated. Having done so, the Additional Sessions Judge was required to consider the Appeals filed by the Applicant on its own merits and independent of the default committed by the Applicant in complying with the conditions imposed by the Court in its orders suspending the sentence.

18. The Additional Sessions Judge by order dated 28th February, 2025 has observed that the Applicant was absent and the Advocate for the Applicant had sought for time. Despite the said observations, the Additional Sessions Judge had proceeded to dismiss the Appeals on the ground of non-deposit and the Applicant having failed to argue the Appeals.

19. The Hon’ble Supreme Court in the case of ***Mohd. Sukur Ali v/s. State of Assam***³, in paragraph nos. 5, 9 & 12 has held as follows :-

3. (2011) 4 SCC 729.

“5. We are of the opinion that even assuming that the counsel for the accused does not appear because of the counsel's negligence or deliberately, even then the court should not decide a criminal case against the accused in the absence of his counsel since an accused in a criminal case should not suffer for the fault of his counsel and in such a situation the court should appoint another counsel as amicus curiae to defend the accused. This is because liberty of a person is the most important feature of our Constitution. Article 21 which guarantees protection of life and personal liberty is the most important fundamental right of the fundamental rights guaranteed by the Constitution. Article 21 can be said to be the “heart and soul” of the fundamental rights.

9. In Maneka Gandhi v. Union of India [(1978) 1 SCC 248 : AIR 1978 SCC 597] , it has been held by a Constitution Bench of this Court that the procedure for depriving a person of his life or liberty should be fair, reasonable and just. We are of the opinion that it is not fair or just that a criminal case should be decided against an accused in the absence of a counsel. It is only a lawyer who is conversant with law who can properly defend an accused in a criminal case. Hence, in our opinion, if a criminal case (whether a trial or appeal/revision) is decided against an accused in the absence of a counsel, there will be violation of Article 21 of the Constitution.

12. We are fully in agreement with Mr. Seervai regarding his above observations. The Founding Fathers of our Constitution were themselves freedom fighters who had seen civil liberties of our people trampled under foreign rule, and who had themselves been incarcerated for long period under the formula “Na vakeel, na daleel, na appeal” (No lawyer, no hearing, no appeal). Many of them were lawyers by profession, and knew the importance of counsel, particularly in criminal cases. It was for this reason that they provided for assistance by counsel under Article 22(1), and that provision must be given the widest construction to effectuate the intention of the Founding Fathers.”

20. Considering the position of law enunciated by the Hon’ble

Supreme Court, the order dated 28th February, 2025 passed by the Additional Sessions Judge is unsustainable. The Additional Sessions Judge ought to have given an opportunity to the Applicant to advance arguments and ought not to have decided the said Appeals in a haste. Applicant has been denied of his valuable right of appeal. Both the reasons assigned by the Additional Sessions Judge are untenable and liable to be set aside.

21. Though the order dated 28th February, 2025, is found to be bad in law, however, the conduct of the Applicant has resulted in causing prejudice to Respondent No. 1, which is required to be undone by compensating Respondent No. 1. The Applicant is therefore directed to pay cost of Rs. 50,000/- to Respondent No. 1 as a condition precedent. Cost shall be paid within a period of 3 weeks from today.

22. In view of the above, **all Criminal Revision Applications are allowed** on the following terms :-

a. The common order dated 28th February, 2025 passed by the Additional Sessions Judge, Kalyan in all the Appeals, are quashed and set aside, consequently the Appeals are restored on the file of the Additional Sessions Judge, Kalyan for hearing *de novo*, after affording an opportunity to the parties. Restoration of the Appeals are subject to the Applicant paying cost of Rs. 50,000/- to Respondent No. 1 on or before 7th November, 2025.

b. Parties to appear before the Additional Sessions Judge, Kalyan on 7th November, 2025. Applicant shall remain

present before the Additional Sessions Judge, Kalyan in-person on 7th November, 2025 and produce the acknowledgment receipt of payment of Rs. 50,000/- to Respondent No. 1. It is only upon the payment of the said amount with proof being placed before the Additional Sessions Judge, Kalyan that the Appeals would stand restored.

c. Failure to pay the cost of Rs. 50,000/- within the stipulated time referred in paragraph 21(b) hereinabove would result in dismissal of the present Criminal Revisions Applications with cost of Rs. 10,000/- each and restoration of the order dated 28th February, 2025.

23. All Criminal Revision Applications stand disposed of accordingly. In view of the Criminal Revision Applications are disposed of, all pending Interim Applications become infructuous, stand disposed of.

[ASHWIN D. BHOBE, J.]

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by GITALAXMI
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KOTAWADEKAR
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2025.10.18
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