

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL MISC. APPLICATION NO. 107 OF 2015**

Mr. Nitish Suryakant Kavlekar ... Applicant

V e r s u s

State & Anr. ... Respondents

Mr. S. D. Lotlikar, Senior Advocate with Mr. C. Padgaonkar,
Advocate for the applicant.

CORAM : K. L. WADANE, J

ORDER RESERVED ON : 29.04.2015

ORDER PRONOUNCED ON : 30.04.2015

O R D E R :

The present application is moved by the applicant/accused under the provisions of Section 389(3) of the Criminal Procedure Code. The applicant was acquitted for the offence punishable under Section 138 of the Negotiable Instrument Act against which the appeal was preferred before this Court by respondent no.2/complainant which came to be allowed by this Court and by judgment dated 13.03.2015, the accused was convicted. However, the accused was not present before this Court at the time of the pronouncement of judgment. Therefore, this Court directed the learned Magistrate to enforce the appearance of

the accused before it and after hearing the parties, inflict appropriate sentence upon the accused. Accordingly, the learned Magistrate imposed sentence of simple imprisonment of six months and further sentenced to pay the complainant a simple interest at the rate of 9% per annum on the amount of Rs.10,00,000/- payable from 02.07.2009. Such interest is payable on reducing balance and till full and final payment. The interest shall be subject to the upper ceiling of double the cheque amount. After pronouncement of the sentence, the accused moved an application under the provisions of Section 389(3) of the Criminal Procedure Code which the learned Magistrate has rejected holding that it has no power to grant it. Hence, the present application.

2. I have heard the arguments of Mr. S. D. Lotlikar, learned Senior Counsel appearing for the applicant. The applicant wants to prefer an appeal against the order of this Court. Therefore, in view of the provisions of Section 389(3) of the Criminal Procedure Code, the sentence imposed upon the applicant is suspended for a period of one month from today as prayed for.

3. The application stands disposed of accordingly.

K. L. WADANE, J

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