

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.391 OF 2015
WITH
CRIMINAL APPLICATION NO.392 OF 2015
IN
CRIMINAL REVISION APPLICATION NO.444 OF 2015**

Rohit B. Zaveri

...Applicant

Versus

Mishrimal Pukhrajji Ranka & Anr.

...Respondents

.....

Mr. Rajiv Narulla for the Applicant.

Mr. Rakesh Dave for Respondent No.1.

Ms R.V. Newton, APP for Respondent No.2 -State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE :8th OCTOBER, 2015.

P. C. :

The Applicant herein is an accused in C.C. No.3184/SS/2008 filed before the Metropolitan Magistrate, 7th Court, Dadar, Mumbai, under section 138 of the Negotiable Instruments Act.

2. The Respondent No.1 is the complainant in the said complaint. He had alleged that the Applicant-accused had issued a cheque dated 10th November, 2007 for an amount of Rs.62,500/- towards the price of cotton cloth and saree falls purchased from him.

The said cheque was dishonoured for insufficient funds. Despite receipt of the statutory notice the Applicant-accused did not make the payment. Hence, the complainant filed a complaint under section 138 of the Negotiable Instruments Act.

3. Upon receipt of the summons the Applicant-accused remained present and pleaded not guilty. After considering the evidence on record the learned Magistrate held the Applicant-accused guilty of the offence punishable under section 138 of the Negotiable Instruments Act and sentenced him to undergo imprisonment till rising of the Court and to pay a fine of Rs.1,00,000/-, in default the Applicant-accused to undergo simple imprisonment for three months. Being aggrieved by the said order the Applicant-accused preferred Criminal Appeal No.766 of 2013 before the Sessions Court, Greater Mumbai. The Additional Sessions Judge/ Special Judge (CBI) Gr. Bombay, dismissed the said appeal vide judgment dated 7th September, 2015 and cancelled the bail bond of the Applicant.

4. The Applicant-accused has challenged his conviction and sentence in this revision application and pending revision he has prayed for suspension of execution of sentence and has also prayed for bail.

5. Heard the learned counsel for the Applicant-accused as well as the learned counsel for the Respondent No.1-complainant. The learned counsel for the Applicant-accused, under instructions states that he has already deposited Rs.25,000/- before the Metropolitan Magistrate, 7th Court Dadar, and that he is ready to pay the balance cheque amount of Rs.37,500/- before the learned Metropolitan Magistrate, 7th Court, Dadar, Mumbai within two weeks. In the light of the above statement, and considering the nature of offence, in my considered view this is a fit case for suspending the execution of sentence till disposal of the revision application, subject to the Applicant-accused furnish bail bond of Rs.15,000/- with one surety to the like amount to the satisfaction of the Metropolitan Magistrate, 7th Court, Dadar, Mumbai.

6. The Applicant-accused shall deposit Rs.37,500/- before the Metropolitan Magistrate, 7th Court, Dadar, Mumbai, within a period of two weeks from today.

7. The learned counsel for the Applicant-accused has further submitted that he has no objection, if the total amount deposited by the Applicant-accused is withdrawn by Respondent No.1-complainant

subject to the outcome of the revision application. The learned counsel for the Respondent No.1-complainant undertakes to refund the amount in case the Applicant-accused succeed in revision application. Statement accepted.

8. The Respondent No.1-complainant is permitted to withdraw the total amount deposited by the Applicant-accused before the Metropolitan Magistrate, 7th Court, Dadar, Mumbai on condition that he shall repay the amount to the Applicant-accused, in case the Applicant-accused succeed in the revision application.

9. Both these criminal applications stand disposed of.

(ANUJA PRABHUDESSAI, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed
Judgment /order.