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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

REVISION APPLICATION NO. 108 OF 2016

Shri Tanaji Ekanath Chavan

..Applicant.

Vs.

Phaltan Traders Nagari Sahakari Pat Sanstha & Anr.

..Respondents.

Mr. Dipak Shinde for Applicant.

Mr. Deepak Thakare, APP for State.

CORAM: A.S. GADKARI, J.

DATE : 2nd April, 2016.

P.C.

1 The present petition is directed against the order dated 29th January 2016 passed by the Additional Sessions Judge at Vaduj, District-Satara thereby vacating the say granted to the suspension of the sentence passed by an order dated 21.12.2015 below Exhibits 5 and 6 in Criminal Appeal No.32 of 2015.

2 The applicant is convicted under Section 138 of the Negotiable Instruments Act and has been sentenced to suffer simple imprisonment for one month by the Judicial Magistrate First Class, Dahiwadi, Taluka Vaduj, District-Satara by its Judgment and Order dated 23.11.2015 passed in S.C.C. No.76 of 2015. By the said Judgment and Order the applicant has also been directed to

pay the compensation of Rs.1,65,000/- to the complainant within two months from the date of passing the said order. Being aggrieved by the said order dated 23.11.2015, the applicant preferred Criminal Appeal bearing No.32 of 2015 in the Court of Additional Sessions Judge at Vaduj, District-Satara. In the said appeal, the applicant filed an application below Exhibit 5 for stay to the Judgment and Order dated 23.11.2015 passed by the Trial Court. The learned Additional Sessions Judge, Vaduj by its Order dated 21.12.2015 allowed the said application and stayed the sentenced of imprisonment till 22.1.2016 on the condition that the applicant shall deposit the amount of compensation in the said Court. The applicant is further ordered to be released on PR bond and surety bond of Rs.15,000/- till 22.1.2016. The said application below Exhibit 5 was thereafter came up for hearing when the Appellate Court passed the impugned order dated 29.1.2016. The Appellate Court observed that the applicant was absent on that day in the Court and the applicant did not comply with the order dated 21.12.2015 passed below Exhibits 5 and 6 in that behalf. The Appellate Court therefore vacated the say granted to the suspension of the sentence and issued a non-bailable warrant against the applicant. The said order is impugned herein.

3 The learned Counsel for the applicant submitted that subsequent to issuance of non-bailable warrant by the impugned order, the applicant appeared

before the Appellate Court on 27.2.2016 and submitted an application below Exhibit 14 for cancellation of non-bailable warrant. The Additional Sessions Judge, Vaduj rejected the said application by its Order dated 22.2.2016 and the applicant has been taken into custody and sent to jail along with conviction warrant for undergoing sentence.

The learned Counsel for the applicant submitted that as a matter of fact the applicant has furnished copy of the receipt of payment of Rs. 1,00,000/- made to the original complainant on 20.12.2013 along with the application filed below Exhibit 3, however, the Appellate Court has not taken into consideration the said receipt. He further, without prejudice to his rights and contentions to be raised in the pending appeal, submitted that as a matter of fact the applicant is at the most liable to pay Rs.65,000/- more to the original complainant. That his client is ready and willing to deposit the balance amount of Rs.65,000/- in the Registry of the Appellate Court within one week from today. He further submitted that the substantive sentence imposed upon the applicant is of one month simple imprisonment and the applicant has as of today already undergone the sentence of nine days.

4 In view of the above and in view of the statement made by the learned Counsel for the applicant that his client will deposit Rs.65,000/- in the Registry of the Appellate Court without prejudice to the rights and contentions

of the applicant to be raised at the time of hearing of the appeal bearing No.32 of 2015, the Orders dated 29th January 2016 and 22.3.2016 are hereby set aside.

The applicant is directed to be released on bail forthwith on his furnishing PR bond of Rs.15,000/- with one or two local sureties in the like amount. If the applicant fails to deposit the amount of Rs.65,000/- within one week from today in the Registry of the Appellate Court, the suspension of sentence shall stand vacated and the applicant to further undergo sentence imposed upon by the Trial Court.

5 The Revision Application is allowed in the aforesaid terms.

6 All the concerned to act on the authenticated copy of this order.

(A.S. GADKARI,J.)