

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

CRIMINAL APPLICATION NO.1049 OF 2014

Money Nair

..Applicant

v/s.

Share Khan Ltd. & Anr.

..Respondents

Mr. S.K.Kotwal a/w. Priyanka Jadhav i/b.T.N.Tripathi & Co. for the Applicant

Mr. Deepak Sharma for the respondent no.1

Mrs. R.M.Gadhvi, APP for the Respondent/State.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 12th January, 2016.**

P.C.

1. By this application filed under Section 482 of Cr.PC. the applicant has challenged the order dated 11.4.2014 in revision Application No.162 of 2013 whereby the learned Sessions Judge, Sewree has dismissed the Criminal Appeal No. 162 of 2013 filed by the aforesaid applicant challenging the judgment and order dated 28.02.2013 in C.C.No. 26609/SS/2008.

2. The respondent no.1 had filed a complaint under Section 138 of the Negotiable Instruments Act against the aforesaid applicant alleging that two cheques for total amount of Rs.10 lakhs issued in his favour by the applicant herein were dishonoured and that the applicant had failed to make the payment within fifteen days from the receipt of notice. The learned Metropolitan Magistrate, 7th Court, upon considering the evidence on record held the applicant guilty of offences under Section 138 of the N.I.Act and sentenced him to undergo imprisonment till rising of the Court and further to pay compensation of Rs.11,50,000/- to the complainant within three months from the date of the order i.d. to undergo S.I. for 6 months. Aggrieved by the said conviction and sentence the applicant had filed Criminal Revision Application No.162 of 2013 before the Sessions Court, Gr. Bombay. The records reveal that the respondent no.1 complainant as well as the applicant accused were absent on the date the revision application was taken up for hearing. The learned Sessions Judge held that he does not find any illegality or impropriety in the order and hence by the impugned order dismissed the revision application filed by the aforesaid applicant. Hence the

present application.

3. Heard learned Counsel Mr. Kotwal for the applicant, learned Counsel Mr. Deepak Sharma for the respondent no.1 and the learned APP for the State.

4. It is submitted by the learned Counsel for the applicant that the learned Sessions Judge has not considered the grounds raised by the applicant-accused and has not given any reasons for arriving at the conclusion that there is no illegality or impropriety in the order.

5. A perusal of the impugned order reveals that the learned Sessions Judge has dismissed the revision application mainly on the ground that the applicant was not present before the court and had not pointed out the illegality/irregularity in the impugned order. Needless to state that the applicant having been convicted for the offence under Section 138 of the Negotiable Instruments Act, the learned Sessions Judge was required to go into the merits of the matter, and could not have disposed of the revision application in perfunctory manner. The impugned order therefore cannot be sustained. Hence the application is allowed. The impugned order dated 11.04.2014 is set aside. The matter is remitted to the Sessions

Court, Sewree, for hearing on merits.

6. Both the parties are directed to appear before the Sessions Court on 1st February, 2016.

(ANUJA PRABHUDESSAI, J.)