

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

CRIMINAL REVISION APPLICATION NO. 555 OF 2015

Mrs. Surekha Sakharam Mohite

... Applicant

vs.

Mr. Bhagwant Sakharam More and anr.

... Respondents

Mr. Pravin Dabade i/by Mr. V. B. Shivarkar, Advocate for the applicant.

Mr. Jatin Shah, Advocate for respondent No.1.

Ms. P. B. Bhosale, Additional Public Prosecutor for the State.

Coram : Smt. R. P. SondurBaldota, J.

Date : 26th February, 2016.

P. C. :

1. Matter is placed on the board for speaking to the minutes of the order dated 18th February, 2016. Mr. Shah, the learned advocate appearing for respondent No.1 points out error in the description of the deposit amount at paras No.1 and 3 of the order. The amount mentioned in the order is of Rs.1,00,000/-, whereas the deposit ordered by the Sessions Court was of “25% of the compensation amount i.e. Rs.1,50,000/-”. The correction in the order be carried out and the order be read accordingly.

2. Parties to act upon authenticated copy of this order.

[Smt. R. P. SondurBaldota, J.]

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 555 OF 2015

Mrs. Surekha Sakharam Mohite

....Applicant
Original Accused

V/S.

Mr. Bhagwant Sakharam More and anr.

.....Orig. Complainant
Respondents

* * * * *

Mr. Vikas B. Shivarkar, Advocate for the applicant.

Mr. Jatin Shah, Advocate for respondent no.1.

Mr. Deepak Thakare, APP for State.

Coram :- Smt. R.P. SondurBaldota, J.

18th February, 2016.

P.C. :-

1). This Revision Application is directed against the order dated 12th October, 2015 by which the Sessions Court, Kalyan dismissed Criminal Appeal No.5 of 2015 filed by the applicant against her conviction for the offence punishable under Section 138 Negotiable Instruments Act and the sentence awarded to her. She is sentenced to suffer simple imprisonment for 15 days and pay compensation of Rs.6,00,000/- to respondent no.1. The reason for dismissal of the appeal is non-compliance with the

order dated 28th January, 2015 passed on the application at Exhibit-4 directing the applicant to deposit **25% of the compensation amount i.e. Rs.1,50,000/-** in Court for suspension of the substantive sentence.

2). Mr. Shah, the learned Advocate appearing for respondent no.1, in absolute fairness concedes that, the Appellate Court could not have dismissed the appeal for non-compliance with the order of deposit. It could have only passed an order directing the applicant to surrender, to suffer the sentence. But at the same time, he draws attention of the Court to the conduct of the applicant of playing with and abusing the process of the Court, to submit that, the applicant does not deserve any further sympathy. He also prays for costs of the present petition.

3). The conduct of the petitioner as pointed out and as reflected from the record is as under :

By the order dated 28th January, 2015 passed on Exhibit-4, the applicant was directed to deposit **25% of the compensation amount i.e. Rs.1,50,000/-** in the Sessions Court for suspension of her substantive sentence. An identical direction was given to her in another Appeal filed by her being Criminal Appeal No. 4 of 2015. Thereafter until 24th August, 2015, the appeal was adjourned on 11 dates to enable the applicant to

deposit the amount. On each of those dates, the applicant had filed applications for extension of time to deposit the amount. Finally, on account of failure to deposit, the Appellate Court, on 24th August, 2015 issued bailable warrant against the applicant. She was then compelled to appear before the Court on 1st September, 2015 to have the bailable warrant cancelled. On the same day, she filed an application signed by herself and her Advocate stating that she was depositing the amount of Rs.1,00,000/- in Criminal Appeal No. 4 of 2015 and would be depositing Rs.1,00,000/- in Criminal Appeal No.5 of 2014 by the next day and sought time to deposit that amount. During the course of submissions on that application, the applicant had expressed her readiness and willingness to deposit the amount within two or three days. Therefore, the learned Judge granted her time till 4th September, 2015 to make the deposit. On the adjourned day i.e. 4th September, 2015 the applicant again sought further time to deposit the amount. The appellate Court rejected the application, with observation that, already sufficient time had been granted to the applicant and that the applicant was merely killing time by filing such applications.

4). On 10th September, 2015, the applicant filed an application signed by herself, as well as, her Advocate seeking

leave to deposit Rs.25,000/- in the Court and permission to deposit the balance amount on the future date. The Court, permitted her to deposit the amount of Rs.25,000/- but rejected the request for further time to deposit the balance amount. On the background of this conduct, the respondent, on 21st September, 2015 filed application for dismissal of the appeal. The Appellate Court, dismissed the appeal on 12th October, 2015.

5). The above undisputed facts, also borne out by the record indicate that, the applicant did not intend to comply with the direction since inception. She only desired to have her sentence suspended and has been enjoying the liberty.

6). In this revision application the applicant alleges for the first time that she had handed over the amount to her advocate Mr. Rahul Waghmare for depositing it with the Nazir of the Court. The advocate, however, did not deposit the amount and retained the same with himself. He kept the applicant under impression that the amount had been deposited. The applicant realized the fact of nondeposit only after the conviction warrant was received by her. The applicant states that she proposes to take action against him or complaining to the Bar Counsel of Maharashtra and Goa.

7). The above claim of the applicant is without necessary

particular. The direction for deposit of the amount was passed on 28th January, 2015 and the bailable warrant issued for non deposit is dated 24th August, 2015. The applicant does not disclose the date within the intervening period of seven months on which the payment was made by her to the advocate. Significantly the fact of payment to the advocate and failure on his part in depositing the amount with Court is not stated either in the application for cancellation of bail or the application for extension of time. The claim can be demonstrated to be false from one more circumstance. In her application dated 1st September, 2015, copy of which is annexed to the revision application, the applicant clearly states that she was depositing the amount of Rs.1,00,000/- in Criminal Appeal No.4 of 2015 and promised to make the deposit in Criminal Appeal No.5 of 2015 on a future date. The applications for extension were repeated on the next two dates i.e. 4th September, 2015 and 10th September, 2015. Significantly all these applications bear signature of the applicant, along with the signature of the same advocate. In none of the applications the complaint of payment of the deposit amount to the advocate is made. Therefore, though the Revision Application is required to be allowed, the respondent would be entitled to the cost of the Revision Application.

8). The Revision Application is allowed. The order dated 12th October, 2015 dismissing Criminal Appeal No. 5 of 2015 is set aside. The appeal is restored to file of the Sessions Court, Kalyan. Since substantive sentence awarded to the applicant is restored, the applicant shall immediately surrender to the Court. The applicant shall pay costs quantified at Rs.25,000/- (Rs. Twenty Five Thousand only) to respondent no.1 within 6 weeks from today.

(SMT. R.P. SONDURBALDOTA, J)

The order is corrected pursuant to the order of speaking to the minutes dated 26th February, 2016.