

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

**CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.89 OF 2017**

IN

CRIMINAL REVISION APPLICATION NO.86 OF 2017

Shah Agencies and Ors.)...Applicants

V/s.

State Of Maharashtra & Anr.)...Respondents

Mr. Sachin Sambre i/by Mr. M.G.Shukla, Advocates for the Applicants.

Ms. A.A.Takalkar, APP for the Respondent - State.

Ms. Pravina Thaker, Advocate for R.No.2.

CORAM : A. M. BADAR, J.

DATE : 17th April, 2017.

P.C. :

This is an application for releasing applicants on bail during the pendency of the revision petition filed by them.

2 Heard the learned advocate appearing for applicants/revision petitioners/original accused. He argued that cheque as well as cheque return memo were not exhibited during the pendency of the trial but those were exhibited after arguments of parties. It is further argued that permission to lead secondary

evidence came to be granted by the learned trial Court without there being anything on record to demonstrate efforts on the part of the complainant to trace out the lost cheque. To buttress this contention, the learned advocate for the applicants placed reliance upon **Parekh Brothers v. Kartick Chandra Saha and Ors.** reported in **AIR 1968 Calcutta 532**. It is argued that even in respect of the alleged lost of cheque and cheque return memo, no complaint with police is filed. No verification of documents was done by the Court below. The cheque was stale cheque. With this, it is argued that applicants are ready and willing to deposit an amount of fine imposed by the learned trial Court.

3 I have also heard the learned advocate appearing for the Respondent No.2/Original Complainant. She argued that both Courts below have concurrently held against applicants/original accused and as such, no law point is involved in the revision petition and, therefore, the applicants should not be released on bail.

4 I have carefully considered the rival submissions and also perused the material made available on record. The

complainant was proprietor of Satyen Polymers and he was carrying out business of manufacture and sale of synthetic polymer, resins. Accused persons were his regular customers and he had sold and delivered goods to them. Towards cost of goods sold, they had issued a cheque of Rs.14 lakhs on 9.9.2000 in favour of the complainant and that cheque came to be dishonoured with an endorsement by the banker 'Stop payment by the Drawer'. This has resulted in filing of complaint for the offence punishable under Sections 138 of the Negotiable Instruments Act, 1881 and after due trial, applicants came to be convicted of the offence punishable under Section 138 read with 141 of the Negotiable instruments Act, 1881. They are sentenced to suffer simple imprisonment for six months by each of them apart from payment of compensation amounting to Rs.28 Lakhs and in default to undergo further simple imprisonment for 4 months by each of them. Feeling aggrieved by this judgment and order of conviction and sentence, applicants approached the Additional Sessions Judge in appeal but their appeal came to be dismissed on 30.1.2017.

5 The revision petition filed by applicants admitted for final hearing today itself by the separate order. It is seen that applicants have deposited an amount of Rs.5.60 lakhs before the trial Court. Short sentence of imprisonment is imposed on them and the revision petition may take its own time for final hearing. The learned advocate for applicants has shown applicants' readiness to deposit the entire amount as directed by the trial Court and, therefore, the order:

(1) On deposit of an amount of Rs.22,40,000/- with the trial Court within a period of two weeks from today, the substantive sentence of imprisonment imposed on applicants-accused is suspended and they are directed to be released on bail on executing PR bond of Rs.15,000/- and on furnishing surety in the like amount by each of them.

(A. M. BADAR, J.)