

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

**CRIMINAL REVISION APPLICATION NO. 488 OF 2018
WITH
CRIMINAL APPLICATION NO. 456 OF 2018
IN
CRIMINAL REVISION APPLICATION NO. 488 OF 2018**

Amber Technologies through
Authorized Signatory
Yashwant Digambar Dharmadhikari ..Applicant
Versus
Avanti Yantra Nirman Pvt. Ltd. and Anr. ..Respondents

Mr. K.U. Nikam for Applicant.
Mr. A.R. Patil, APP for the State.

**CORAM : A.S. Gadkari, J.
DATED : 18th September 2018.**

P.C. :-

The present Revision Application is directed against the Order dated 6th August 2018 passed by the learned Additional Sessions Judge, Sangli in Criminal Appeal No. 216 of 2011 thereby, dismissing the said Appeal for non-prosecution.

2. Heard learned Counsel for the Applicant and the learned APP. Perused the record.
3. The Applicant has been convicted under Section 138 of

the Negotiable Instruments Act and sentenced to suffer simple imprisonment for a period of 3 months and to pay a compensation of Rs.54,000/- by the learned IV Joint Judicial Magistrate, First Class, Sangli in S.C.C. No. 165 of 2008, by its Judgment and Order dated 21st May 2011.

4. The Applicant preferred Criminal Appeal under Section 374 of Cr.P.C. against his conviction bearing Appeal No. 216 of 2011 which was pending for final adjudication before the learned Additional Sessions Judge, Sangli.

As noted earlier, the said Appeal came to be dismissed by the impugned Order dated 6th August 2018 for want of prosecution.

5. The Hon'ble the Supreme Court in the case of *Bani Singh & Ors. Vs. State of U.P., reported in (1996) 4 SCC 720 : 1996 SCC (Cri.) 848*, has categorically held that, a criminal Appeal should not be dismissed in default, but should be decided on merits. The said view is further followed by the Supreme Court in the case of *Madan Lal Kapoor Vs. Rajiv Thapar & Ors. (2007) 7 SCC 623*.

6. In view of the ratio laid down by the Supreme Court in the case of *Bani Singh (Supra)*, the impugned Order dated 6th August 2018 is set aside and Appeal No. 216 of 2011 is restored to the file of learned Additional Sessions Judge, Sangli.

7. The Applicant is directed to appear before the Appellate Court either personally or through its Advocate on each and every date without seeking any adjournment and co-operate with the Court till concluding the hearing of the said Appeal.

8. Revision Application No. 488 of 2018 is allowed.
9. In view of order passed in Revision Application No. 488 of 2018, Criminal Application No. 456 of 2018 does not survive and same is accordingly disposed off.

(A.S. Gadkari, J.)