

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

CRI. REVISION APPLICATION NO.482 OF 2017

Ramdas Abasaheb Deshmukh

.. Applicant

Vs.

Vishwas Narayan Devkate & Anr.

.. Respondents

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Mr.Chaitanya Malgaonkar i/b. G.M.S. Legal, Advocate for the Applicant.

Mr.Abhijit P.Kulkarni, Advocate for Respondent No.1.

Mrs.M.R. Tidke, APP for the Respondent - State.

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CORAM : PRAKASH D. NAIK, J.

DATED : FEBRUARY 9, 2018.

P.C. :

Heard both the sides for final disposal.

2 The applicant has been convicted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 vide judgment and order dated 16th March, 2017. The applicant was sentenced to suffer simple imprisonment for a period of three months and was also directed to pay compensation of Rs.16,15,000/-, to the complainant.

3 The applicant preferred Criminal Appeal No.21 of 2017, before the Sessions Court, Baramati, challenging the judgment and order of conviction. Applicant had also preferred an application for suspension of sentence. The application for suspension of sentence was allowed vide order dated 6th April, 2017, with the condition that the applicant shall deposit Rs.5,00,000/- compensation before the learned Magistrate within four weeks. Applicant did not comply the directions to deposit the amount of Rs.5,00,000/-. Applicant was also absent before the Appellate Court on 29th March, 2017 and 26th July, 2017. In the circumstances, the Appellate Court dismissed the Appeal on account of absence of the applicant and his advocate on 26th July, 2017. Hence, the applicant has preferred this Revision Application challenging the said order.

4 Learned advocate for the applicant submits that on account of financial constraints, the amount of Rs.5,00,000/- could not be deposited, as directed by the Sessions Court. It is further submitted that due to difficulty, the applicant and his advocate were absent on two occasions. It is further submitted that the Sessions Court could not have dismissed the Appeal for

absence of advocate and the applicant. It is submitted that the applicant is willing to deposit the amount of Rs.5,00,000/-, as directed by the Sessions Court within a period of one week from today.

5 Learned counsel for the respondent submitted that the applicant - accused had issued a cheque for an amount of Rs.8,50,000/- and for dishonour of the said cheque, the applicant has been convicted on 16th March,2017. Applicant has not complied the order of the Sessions Court and had not appeared on two occasions before the Sessions Court. Applicant is trying to avoid the compliance of the order of the Sessions Court. The respondent being the complainant is suffering on account of the conduct of the applicant - accused. It is also submitted that for the sufferings and harassment caused to the respondents, costs may be imposed.

6 During the pendency of this Revision Application, this Court vide order dated 21st September, 2017, enlarged the applicant on bail on furnishing PR Bond in the sum of Rs.10,000/-, with one or two sureties in the like amount. The said application was disposed of. It is noted that the applicant was directed to pay

an amount of Rs.5,00,000/-, by the Sessions Court while passing the order of suspension of sentence on 6th April, 2017. The said order was not complied. It was also observed that in case the applicant fails to deposit the said amount, the application would stand dismissed automatically. Since the amount was not deposited, the order dated 6th April, 2017, stands vacated. However, as stated above, thereafter, the applicant has been granted bail by this Court.

7 Considering the fact that the Appeal was dismissed for default on account of absence of the applicant on two occasions, the same can be restored to its original status. The applicant has shown his willingness to deposit an amount of Rs.5,00,000/-, before the Sessions Court within a period of one week from today.

8 In the circumstances, I pass the following order:

:: ORDER ::

- (i) The order dated 26th July, 2017, passed by the Additional Sessions Judge, Baramati in Criminal Appeal No.21 of 2010, dismissing the Appeal is

set aside and the Appeal is restored. The Appeal is directed to be heard and decided in accordance with law;

- (ii) Applicant is directed to deposit an amount of Rs.5,00,000/-, before the trial Court within a period of one week from today;
- (iii) Since the order dated 6th April, 2017, stands vacated in view of non-compliance of the said order, the applicant is permitted to prefer a fresh application for suspension of sentence before the Appellate Court. The Appellate Court shall consider the fact that the applicant is depositing an amount of Rs.5,00,000/-, towards the compensation;
- (iv) The order granting bail passed by this Court in Criminal Application No.482 of 2017 on 21st September, 2017, shall continue to operate for a period of four weeks from today;

- (v) It is also made clear that the Appellate Court need not insist that the applicant shall surrender before preferring the application;
- (vi) Applicant is also directed to pay cost of Rs.20,000/- to the respondent-complainant, within two weeks from today;
- (vii) The application for suspension of sentence shall be entertained by the Sessions Court, in the event the applicant deposit an amount of Rs.5,00,000/-, before the trial Court within a period of one week from today;
- (viii) Revision Application stands disposed of.

(PRAKASH D. NAIK, J.)