

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

CRIMINAL REVISION APPLICATION No. 220 OF 2002

Thawar D. Valecha

...Applicant

Versus

Balkrishna Purushottam Joshi & Anr.

...Respondents

Ms.Rahila Memon I/b. Mr. Amin Solkar for the Applicant.
Mr.Vinod Chate, APP for Respondent No.2-State.

**CORAM : MRS. MRIDULA BHATKAR, J.
DATE : 21 FEBRUARY 2019**

P.C.:

1. The applicant/accused is convicted for the offence punishable under section 138 of the Negotiable Instruments Act and is sentenced to suffer S.I. for six months and to pay a fine of Rs. 10,000/-, in default to suffer S.I for 30 days by judgment and order dated 02.02.2000 passed by the learned Chief Judicial Magistrate, Nashik in S.T.C.C. No. 2824 of 1995. The said order was challenged in Criminal Appeal No. 12 of 2000. The said Appeal was dismissed by judgment and order dated 04.06.2002 passed by the learned II Additional Sessions Judge, Nashik. Hence, this Revision Application.

2. The learned counsel for the applicant/accused informs the Court that as per the case of the prosecution, the applicant/accused had borrowed Rs. 4 lacs from the original complainant i.e., respondent No.1 for which he had issued cheques, which were dishonored. She submits that Civil Suit No. 839 of 1993 was also filed by the original complainant against the applicant/accused for recovery of the said amount, however, it was settled and the decree was passed on 06.08.1996. In the said decree, it was mentioned that out of Rs. 4 lacs, the applicant/accused had paid Rs. 2 lacs by way of cash to the original complainant, however, Rs. 1,45,000/- was also paid thereafter by the applicant/accused to the original complainant. Thus, the amount due and payable was Rs. 1,55,000/-. She further submits that the Civil Court directed the applicant/accused to repay the said amount by way of monthly installment of Rs. 5,000/- to the original complainant. One cheque of Rs.5,000/-, which was issued by the applicant/accused in favour of the original complainant was dishonored and hence, he is facing prosecution. She further submits that the applicant/accused went on paying the amount. He has paid Rs. 95,000/- by way of monthly installment of Rs. 5,000/-. She produces photocopies of the applications filed by the original complainant for withdrawal of the amount of Rs. 72,000/- and also Rs. 23,000/-, which were received by the

Court on 10.10.2002 and 07.03.2001 respectively. She further submits that the amount of Rs.60,000/- was in fact deposited by the applicant/accused in the account of the original complainant. She further submits that the original complainant and his wife both expired, but they did not have any issue. She files affidavit dated 21.02.2019 wherein the applicant/accused has mentioned that he had paid the total cheque amount of Rs. 4 lacs to the respondent- Late Mr.Balakrishna P.Joshi.

3. The affidavit dated 21.02.2019 filed by the applicant is taken on record.

4. In view of this and considering the time gap, the judgment and order of conviction dated 02.02.2000 passed by the learned Chief Judicial Magistrate, Nashik in S.T.C.C. No.2824 of 1995 and also the judgment and order confirming the said order in Criminal Appeal No. 12 of 2000 are hereby set aside.

5. Criminal Revision Application is allowed and accordingly disposed of.

(MRIDULA BHATKAR, J.)