

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

**CRIMINAL REVISION APPLICATION NO. 218 OF 2022
IN
APPEAL NO.96 OF 2018**

Anisa Akbar Ansari ...Applicant
Versus
State Of Maharashtra And Anr. ...Respondents

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Mr. Shashank Mishra a/w Mr. Shubham Awasthi, Advocate for the Applicant.

Mr. Arfan Sait, APP for the Respondent – State.

CORAM : PRAKASH D. NAIK, J.
DATE : 20th JUNE, 2022.

PER COURT:

1. The Applicant has challenged the order dated 25th February, 2022 passed by learned Additional Sessions Judge, Thane, the Applicant is arraigned as accused in complaint bearing SCC No.4665 of 2015 filed by Respondent No.2 before the Court of learned Magistrate for offence punishable under Section 138 of Negotiable Instruments Act, 1881. By judgment and order dated 9th April, 2018, the Applicant was convicted for the offence punishable under Section 138 of Negotiable Instruments Act, 1881 and sentenced to suffer simple imprisonment of one year and to pay fine of Rs.29,28,000/-. It was directed that the amount of fine be given to the complainant. The Applicant challenged the

judgment of conviction by preferring Appeal No.96 of 2018 before the Sessions Court. The Applicant preferred an application for suspension of sentence which was partly allowed by the Sessions Court by order dated 27th September, 2019. The Applicant was directed to deposit the amount of Rs.5,85,600/-.

2. The Applicant preferred an application under Section 391 of Cr.PC. for recording additional evidence. The said application was rejected by order dated 25th February, 2022.

3. The grounds urged in this application challenging the impugned order is that the appellate Court has erroneously passed the impugned order. The Applicant had no intention to protract the trial. He was not aware of the documents which are relevant to be produced during the trial. The Applicant relied upon the Advocate who, conducted the trial. There was negligence by the Advocate representing the Applicant. The Applicant wants to bring the important evidence before the Court. The property in question is part of various litigation and amongst one of them is settled by the Applicant for which he had paid 22,00,000/-. The said property was owned by the complainant as well as others. The complainant never disclosed that after dishonour of the cheque amounting to Rs.14,64,000/-, the Respondent/Complainant

encashed another cheque of Rs.10,00,000/-. There was no legally enforceable liability. All these factors are required to be brought on record by additional affidavit.

4. The Applicant has been convicted by the trial Court for the offence punishable under Section 138 of Negotiable Instruments Act, 1881. The Court has taken into consideration the evidence on record. The trial Court has taken note of the complaint and other evidence and defence of the accused. It would not be advisable to make further observations on the judgment of the trial Court since the appeal preferred by the Applicant is pending before the Sessions Court. The Sessions Court while rejecting the application under Section 391 of Cr.PC. has assigned the reasons. It was observed that the affidavit-in-chief was filed by complainant on 4th April, 2017. The complainant was cross examined on 29th June, 2017 and 26th July, 2017. The complainant has placed on record documents such as judgment from Civil Suit No.155 of 2014. Questions were put to the accused while recording statement under Section 313 of Cr.PC. regarding execution of agreement to sale dated 20th March, 2014 and she has admitted the execution of the same. Written notes of arguments was submitted by the accused and now fresh ground is urged for recording additional evidence.

The Applicant has made allegations against the Advocate on record, who, represented her before the trial Court. However, considering the conduct of the Applicant during trial, cross examination of complainant and material submitted by respective parties, there is no question to direct recording of additional evidence. From the examination of complainant it was revealed that execution of agreement to sale was not challenged. The Applicant did not entered into witness box. Opportunity was available to both parties to adduce the evidence.

5. I do not find any reason to take a different view from the impugned order dated 25th February, 2022. The learned Sessions Judge has given elaborate reasons for rejecting the application. As rightly observed by the trial Court, the evidence of complainant was brought on record. The complainant was cross examined in 2017. Sufficient opportunity was available to the accused to bring on record her defence. Statement under Section 313 of Cr.PC. was recorded. For the first time after the conviction, the accused is trying to rely upon certain documents. The Applicant has blamed her Advocate for not representing her properly and contending that there is no fair trial. There is no substance in the ground urged by the Applicant. Hence, I pass the following order :-

ORDER

Criminal Revision Application No.218 of 2022 is
rejected and stands disposed of accordingly.

(PRAKASH D. NAIK, J.)