

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

**CRIMINAL WRIT PETITION NO. 3645 OF 2022**

Yashwant Uttamlal Jaiswal ... Petitioner  
Vs  
Ravindra Govind Jaiswal and Ors. ... Respondents

Mr. Rahul Arote for the Petitioner.

Mr. Amit Date a/w Ms. Anjali Thakoor i/b Satishkumar  
Chettiyar for Respondent No.1.

Mr. A.D. Kamkhedkar APP for Respondent/State.

YUGANDHARA  
SHARAD  
PATIL

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**CORAM : AMIT BORKAR, J.**

**DATED : 25<sup>th</sup> NOVEMBER, 2022**

**PC.:**

1. The subject matter of the Petition is dismissal of Revision Application against an order of issuance of warrant for recovery of an amount of compensation.

2. Learned Magistrate by Judgment and order dated 15<sup>th</sup> June 2016, had convicted the Petitioner for offence under Section 138 of Negotiable Instruments Act, 1881 and imposed fine of Rs.9,05,000/-. The said order attained finally.

3. In a connected proceeding filed by same complainant bearing SCC No.1881 of 2012, the Petitioner was convicted and

directed to pay fine of Rs.11,25,000/-. Aggrieved thereby, Petitioner filed Appeal No.132 of 2016. As required under Section 148 of Negotiable Instruments Act, 1881, Petitioner deposited amount of Rs.2,24,000/-, which was withdrawn by the complainant. By Judgment and order dated 1<sup>st</sup> August 2019, Appeal No.132 of 2016 was allowed. The complainant had challenged the decision by way of Appeal against acquittal.

4. In a proceeding filed by the complainant for recovery of fine amount imposed in SCC No. 1881 of 2012, the accused requested the Magistrate to appropriate the amount of Rs.2,24,000/- deposited under Section 148 of Negotiable Instruments Act, 1881, in Criminal Appeal No. 132 of 2016 filed by the petitioner. Both the Courts below have rejected the request and issued warrant for recovery of remaining fine amount.

5. Learned Revisional Court rejected Revision holding that both proceedings are distinct in nature and, therefore, issuance of warrant against the Petitioner was legal and proper.

6. On overall perusal of the material on record, it appears that the Petitioner was entitled to receive the amount of Rs.2,24,000/- deposited in Criminal Appeal No. 132 of 2016. On conviction being set aside by the Appellate Court, the right to receive amount of Rs.2,24,000/- at prevalent bank rate is a

statutory right conferred on the Petitioner under Section 148 of Negotiable Instruments Act, 1881. The Petitioner intended to waive said statutory right to get reimbursement and requested the trial Court to appropriate said amount. It was therefore necessary in the interest of justice for the Courts to appropriate said amount towards the fine amount imposed in SCC No. 1881 of 2012. Ultimately complainant in both the cases is the same person. Therefore, in my opinion, the request made by the accused to appropriate the amount of Rs.2,24,000/- in Criminal Appeal No. 132 of 2016 needs to be appropriated towards the fine imposed in SCC No. 1881 of 2012.

7. Learned Magistrate shall appropriate amount deposited in Criminal Appeal No. 132 of 2016, as required under Section 148 of Negotiable Instruments Act, 1881, towards the fine imposed in SCC No. 1881 of 2012 and if there is any balance, the same shall be repaid to the Petitioner.

8. Accordingly, the Order dated 15<sup>th</sup> June 2022, passed by Judicial Magistrate, First Class below Exhibit No. 1 in Criminal Miscellaneous Application No. 299 of 2019 is quashed and set aside.

**(AMIT BORKAR, J.)**