

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

909 CRIMINAL REVISION APPLICATION NO.26 OF 2023
WITH APPLN/472/2023 IN REVN/26/2023

SHABBIR KHAN HABIB KHAN PATHAN
VERSUS
VISHWAKALYAN URBAN CO-OP CREDIT SOCIETY LTD.
AURANGABAD THROUGH MANAGER DAMODHAR
SAMPATRAO DABHADE

...
Advocate for Applicant : Mr. Deshpande Chaitanya
Chandrakant.
Advocate for Respondent : Mr. Jahagirdar Virendra V.
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CORAM : S. G. MEHARE, J.
DATE : 26.04.2023

PER COURT :-

1. Heard the learned counsel for the applicant and the learned counsel for the respondent.
2. The applicant was convicted for the offence punishable under Section 138 of the N. I. Act. He had issued the cheque to the respondent/complainant, in the year 2014, for Rs.12,56,203/-. However, it was dishonoured. The applicant was convicted by two consecutive judgments. The sentence was suspended till the appearance of the respondent/complainant. The respondent/complainant has strongly opposed the application. He submits that this is not a

fit case to exercise the discretion, as the public money has been withhold by the applicant. It is a financial dispute. Though the applicant shown his willingness to deposit the entire amount, he did not comply with it. He is unnecessarily killing the time. He has many sources of income. But, he is not willing to pay the money of the respondent/complainant.

3. The offence relates to the money. The public money appears to have been misused by the applicant. He did not repay the same. The conduct of the parties is material to exercise the discretion for suspension of the sentence. The wrongdoer cannot misuse the public money. Considering the length of litigation, the Court is of the view that this is not a fit case to exercise the discretion under Section 389 of the Cr.P.C. Hence, the application for suspension of sentence is dismissed.

4. The surety furnished by the applicant before the learned Additional Sessions Judge, Aurangabad in Criminal Appeal No.18 of 2020, dated 18.01.2023 stands cancelled. The surety stands discharged.

5. The applicant is directed to surrender before the learned Judicial Magistrate First Class, Aurangabad for executing the sentence, on or before 09.05.2023. If he would not appear, the Court may issue the conviction warrant forthwith.

6. In view of the above terms, Criminal Application stands dismissed.

7. Criminal Revision Application, stand over to 26.06.2023.

(S. G. MEHARE, J.)

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vmk/-