

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO.11 OF 2023
WITH APPLN/161/2023 IN REVN/11/2023
WITH APPLN/784/2023 IN REVN/11/2023

DEVIDAS MANSING RATHOD
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Applicant : Mr. Ram S. Shinde
APP for Respondent No.1/State : Mr. S. B. Narwade
Advocate for Respondent No.2 : Mr. Prashant V. Gole
...

CORAM : S. G. MEHARE, J.

DATE : 23-02-2023

PER COURT :-

1. Heard the learned counsel for the applicant, the learned A.P.P. for respondent No.1/State and the learned counsel for respondent No.2/original complainant.

2. The applicant has been convicted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, by the judgment and order passed by the learned Judicial Magistrate First Class, Udgir, in SCC No.119 of 2013. Against the judgment and order of the learned Magistrate, the applicant has preferred Criminal Appeal No.17 of 2019. The judgment and order of conviction was confirmed by the learned Additional Sessions Judge-1, Udgir. The applicant remained absent at the time of pronouncement of the judgment. Therefore, the learned Sessions Judge, instead of issuing warrant of arrest for sending the

applicant in jail for execution of sentence, directed the learned Judicial Magistrate to take necessary action. Thereafter, the applicant was arrested in view of the warrant.

3. The learned counsel for respondent No.2/complainant opposed the application. He would submit that the applicant was not obedient. In the morning session, the applicant was present before the learned Additional Sessions Judge, but in the second session, when learned Sessions Court pronounced the judgment, he had left the court.

4. The learned counsel for the applicant submits that the applicant did not leave the court on his own, but his lawyer appearing in the District Court told him that the judgment may not be pronounced, hence, asked him to leave the court. To save the skin, the litigants irresponsibly make such allegations against the lawyer. It is very common. Hence, in the absence of cogent and reliable material, the explanation of the accused for his absence at the time of pronouncement of the judgment is unacceptable.

5. The conclusion of revision may take its time. Considering the conduct of the applicant, the Court is of the view that, the discretion under Section 389 of the Code of Criminal Procedure can not be exercised blankly, certain conditions shall be imposed. Hence, the following order :-

- i) Criminal Applications Nos. 161 and 784 of 2023 stand allowed.

- ii) The execution of sentence of imprisonment to suffer SI for one year imposed against the applicant by the learned Judicial Magistrate First Class, (Court No.3), Udgir, in Summary Criminal Case No. 119 of 2013, dated 14.08.2019, and confirmed by the learned Additional Sessions Judge-1, Udgir, vide judgment and order, dated 15.12.2022, in Criminal Appeal No. 17 of 2019, is suspended, till the disposal of the revision, on the condition that the applicant shall deposit entire compensation amount Rs.2,00,000/- except the amount which he has deposited in the court, within a week after his release.
- iii) The applicant be released on bail on executing P.B. and S.B. of Rs.50,000/- with one solvent surety of the like amount.
- iv) Bail before the learned Additional Sessions Judge-1, Udgir.
- v) List the criminal revision application No.11 of 2023 on 06.04.2023.

**(S. G. MEHARE)
JUDGE**

rrd