

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

901 CRIMINAL REVISION APPLICATION NO.136 OF 2023
WITH APPLN/1633/2023 IN REVN/136/2023

**RAFIK MIRASAHAB SAYYAD
VERSUS
ASRAR FAKIR MOHAMMAD SHAIKH AND ANOTHER**

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Advocate for Applicant : Mr. Shaikh Joyeb I.
Advocate for Respondent No.1 : Mr. U. D. Dalvi.
APP for Respondent-State : Mr. S. B. Narwade.
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CORAM : S. G. MEHARE, J.
DATE : 05.07.2023

PER COURT :-

1. Heard the learned counsels for the respective parties.
2. The applicant is seeking suspension of sentence imposed upon him to suffer six months S.I. for the offence punishable under Section 138 of the N.I.Act and six months imprisonment for default in paying the compensation, passed by the learned Additional Chief Judicial Magistrate, Court No.8, Ahmednagar in SCC.No.963 of 2016, dated 05.11.2019 and confirmed by the learned Additional Sessions Judge, Ahmednagar in Criminal Appeal No.233 of 2019, dated 01.04.2023.

3. Learned counsel for the applicant would submit that the applicant has a good case on merit. The legal issues as regards to the legally enforceable debt were not considered. The defence proved on preponderance of probability has also not been properly appreciated. The applicant has undergone sentence for ten months. The substantive sentence has already been undergone. He would submit that there shall be no imprisonment for default in paying the compensation, as it is a money decree. Since it is a money decree, the complainant may take an appropriate action for recovery. No person would be convicted for his failure to pay the money. This legal aspect has not been considered. Hence, the applicant has good case on merit to be contested in the criminal revision application.

4. Per contra, the learned counsel for the respondent/complainant would vehemently argue that the applicant's conduct needs to be considered. He did not deposit 20% of the cheque amount before the Appellate Court. Hence, for his default, he was taken into custody and since then, he is behind bar. The applicant did not show bonafide. He has also executed a bond accepting the debt and for discharging the said legally

enforceable debt, he had issued the cheque in dispute. Therefore, he has no good case for suspension of the sentence. There are no legal points involved in the case.

5. There appears substance in the submissions of the learned counsel for the applicant that whether a person be sent to imprisonment for default to pay the compensation amount. This is a legal arguable point to be considered in this case. The applicant has undergone the substantive sentence of simple imprisonment for six months for the offence punishable under Section 138 of the N.I.Act. In view of the law point raised and the facts of the case, the Court is of the view that this is a fit case to suspend the sentence. Hence, the following order :

ORDER

- (i) Criminal Application is allowed.
- (ii) The execution, implementation, effect and operation of the sentence to suffer six months S.I. for default in paying the compensation imposed by the learned Additional Chief Judicial Magistrate, Court No.8, Ahmednagar, in SCC.No.963 of 2016, dated 05.11.2019 and confirmed by the learned

Additional Sessions Judge, Ahmednagar in Criminal Appeal No.233 of 2019, dated 01.04.2023 is suspended till conclusion of the criminal revision application.

- (iii) The applicant be released on bail on executing P.B. and S.B. of Rs.50,000/- (Rupees Fifty Thousand only) with one solvent surety of the like amount.
- (iv) Bail before the learned Additional Sessions Judge, Ahmednagar.
- (v) Call Record and Proceedings.
- (vi) Stand over to 22.08.2023.

(S. G. MEHARE, J.)

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vmk/-