

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

**REVISION APPLICATION NO. 1 OF 2024
(SERIAL NO. 2)**

Samir Krushnat Dhumal

...Applicant

vs.

Vishal Yarn Agencies Through
Its Patner Rajiv N. Shah

...Respondent

Mr. Lokesh Zade i/by Mr. Paras Yadav	Advocate for the Applicant
Ms. Shraddha Jadhav i/by Mr. Aagam J. Doshi	Advocate for the Respondent No. 1
Mr. V. N. Sagare	APP for Respondent-State

**ALONGWITH
REVISION APPLICATION (ST) NO. 415 OF 2024
(SERIAL NO. 3)
WITH
INTERIM APPLICATION NO. 1306 OF 2024
WITH
INTERIM APPLICATION NO. 1307 OF 2024**

Samir Krushnat Dhumal

...Applicant

vs.

State of Maharashtra

...Respondent

Mr. Lokesh Zade	Advocate for the Applicant
Ms. Shraddha Jadhav i/by Mr. Aagam J. Doshi	Advocate for the Respondent No. 2
Mr. Y. Y. Dabke	APP for Respondent-State

CORAM : S. M. MODAK, J.

DATE : 10th MAY 2024

P.C. :-

1. A limited issue involved in both these revision applications. The issue is whether the Appellate Court was justified in dismissing the appeal for non-prosecution.
2. The present Applicant is convicted for an offence punishable under Section 138 of the Negotiable Instruments Act. The Court of the JMFC, Ichalkaranji, District Kolhapur convicted the Applicant in two cases for an offence punishable under Section 138 of the Negotiable Instruments Act. Two cheques were issued for an amount of Rs. 6,30,597/- and 7,57,268/-.
3. Though cheques were issued towards purchase of the fabrics, after evidence he was convicted. The sentence is as follows:-
 - a) Fine of Rs. 6,30,597/- in case of No. 2426 of 2018 and fine of Rs. 7,57,268/- in summary case no. 2423 of 2018.
 - b) If the amount is not paid, there shall be rigorous imprisonment for one year.

4. The correctness of both these judgments was challenged before the Court of the Additional Sessions Judge, by way of Criminal Appeal No. 109 of 2022 and 110 of 2022. However the Applicant neither pressed for suspension of the sentence nor prosecuted both these appeals and that is why both these appeals were dismissed on 21/08/2023. The present two revisions are filed.

5. This Court as per Order dated 05/01/2024 was pleased to suspend the sentence and payment of fine on condition to deposit 20% before the Court of JMFC. Accordingly an amount of Rs. 7,57,268/- is deposited before the trial Magistrate. Whereas similar order is passed on 03/01/2024. Accordingly, the amount of Rs. 6,30,597/- is deposited before the trial Magistrate.

6. The circulation is sought on behalf of the Respondent – Complainant for the reason that suspension orders were passed exparte and they want Court should ask the Applicant to deposit more amount.

7. By considering the limited issue involved, this revision applications are taken for final hearing at an admission stage.

8. Two issues are involved. One is Whether the Appellate Court was justified in dismissing the appeal and Two is, if at all, it is

remanded, whether the Applicant should be asked to deposit more amount.

9. Learned Advocate for the Respondent requests to direct the Applicant to deposit 100%. Whereas according to the learned Advocate for the Applicant, let the issue be decided by the Appellate Court and as per provision of Section 148 of the Negotiable Instruments Act, there is mandatory deposit 20% of the amount of the fine.

10. It is true that condition to deposit the amount is discretionary. It may be imposed or may not be imposed. So also how much will be the amount is discretion of the Court. However such discretion has to be exercised judiciously.

11. It is submitted that the Applicant is suffering from dengue and the Applicant could not pursue the appeal, in view of the non-communication. The contention is the Applicant should be given an opportunity to contest the first appeal. However contention is cheques were issued by way of security in pursuance to the business transaction. That is to say the prior to delivery of the fabrics, the cheques were issued. It is true that first appeal is matter of the right and Applicant

need to be given an opportunity to pursue the revision.

12. So in the interest of the justice, I am inclined to remand the matter. However in addition to 20% the Applicant should deposit 20% in both the cases from the amount of the fine before the trial Magistrate. Even the Respondent can be permitted to withdraw the amount subject to furnishing an undertaking. In view of that following order is passed:

ORDER

- (i) Both revision applications are allowed.
- (ii) Order dated 21/08/2023 passed in Criminal Appeal Nos. 109 and 110 of 2022 by the Court of the Additional Judge, Ichalkaranji, Kolhapur is set aside.
- (iii) Appeals are restored subject to the following conditions:
 - (a) The Applicant is directed to deposit Rs. 1,51,455/- and 1,26,120/- being 20 % of (cheque amount Rs. 7,57,268/- and Rs. 6,30,597/-) within a period of eight weeks before the trial Magistrate.
 - (b) The Respondent is permitted to withdraw the amounts subject to furnishing an undertaking that he will return the

amount if directed by the Appellate Court.

(iii) The Applicant to pray for suspension of the sentence and furnishing of the bail before the Appellate Court.

(iv) It is made clear that this Court has already decided the contention about deposit of the amount and the Appellate Court may pass necessary order about furnishing the surety.

(v) Both the Parties are directed to appear before the Appellate Court on 18/06/2024.

13. Both revision applications are disposed of.

14. Accordingly, interim application, if any, stands disposed of.

[S. M. MODAK, J.]