

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

CRIMINAL APPLICATION NO.101 OF 2024

Jitendra Shakerlal Brahmbhatt ...Applicant
Versus
Param Kruma Construction LLP and Anr. ...Respondents

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Ms. Shraddha Singh i/by Ms. Seema Singh, Advocate for the Applicant.
Mr. Jatin P. Shah a/w Ms. S. Munj, Ms. Shraddha Kamble, Ms. Preeti
S.G. i/by Mr. Bankim Gangar, Advocate for the Respondent No.1
Mr. Arfan Sait, APP for the Respondent No.2 – State.

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CORAM : PRAKASH D. NAIK, J.
DATE : 30th JANUARY, 2024.

P.C.:

1. Not on board. Taken on board.
2. The applicant is convicted for an offence under Section 138 of the Negotiable Instruments Act (for short "NI Act") vide Judgment and order dated 20th September 2023 passed by the learned Metropolitan Magistrate, 56th Court, Mazgaon, Mumbai in C.C. No.5600618/SC/2022. The applicant (accused No.2) is sentenced to pay compensation of Rs.4,16,21,938/- along with 9% simple interest per annum from the date of filing of complaint till its realization to the complainant within one month and in default of payment of compensation, he was directed to undergo simple imprisonment for six months.

3. The Judgment of conviction was challenged by the applicant before the Court of Sessions by preferring Criminal Appeal No.743 of 2023. Vide order dated 31st October 2023 the substantive sentence imposed by the trial Court was suspended till the disposal of appeal subject to the applicant depositing 20% interim compensation amount from the compensation amount of Rs.4,16,21,938/- within 60 days from the date of order, in consonance with Section 148(2) of the NI Act. It was further directed that failure to comply with the payment/deposition of the 20% amount of interim compensation it would automatically entail for revocation of suspension of sentence/stay and operation of order of the trial Court.

4. The applicant is praying for vacating the condition to deposit 20% amount of interim compensation imposed while suspending sentence by order dated 31st October 2024 passed by the Sessions Court.

5. Learned Advocate for the applicant submitted that the applicant had also preferred an application before the Sessions Court which is pending and due for hearing tomorrow i.e. on 31st January 2024, however the period of 90 days stipulated in Section 148(2) of the NI Act comes to an end tomorrow. The applicant is

disabled person. His legs are amputated. He is in financial constraints. The applicant has goods case on merits. The appeal is pending before the Sessions Court. The conditional order passed by the Sessions Court while suspending the sentence is required to be set aside. On account of his disability, the applicant is not in a position to arrange the funds. Hence, the applicant be exempted from depositing 20% amount of interim compensation as directed by the Sessions Court.

6. Per contra Mr. Shah, the learned Advocate for Respondent No.1 submitted that the applicant has been convicted for an offence under Section 138 of the NI Act. The transaction is of 2016. The respondent was the contractor. He was supposed to clear the liability of the labourers. The cheque was issued on 30th November 2021. It was dishonoured on 2nd December 2021. During pendency of the trial, the applicant was directed to pay the compensation in accordance with Section 143(A) of the NI Act, which order was not complied by the applicant. The applicant is claiming waiver of the payment of compensation on vague grounds. The applicant had paid amount and clear his liabilities on several other creditors. The period of 90 days stipulated in Section 148(2) of the NI Act has come to an end. Hence, no relief be granted to the applicant.

7. Undisputedly, the applicant has been convicted for an offence under Section 138 of the NI Act. The compensation amount is huge i.e. in the sum of Rs.4,16,21,938/-. The sentence imposed by the trial Court was suspended by the trial Court subject to condition of payment of depositing 20% amount of the compensation within a period of 60 days. There was no extension thereafter. However, the period of 90 days is expiring tomorrow. The grounds urged by the applicant are devoid of merits. The transactions are of 2016. The applicant had failed to comply the previous order passed by the trial Court under Section 143(A) of the NI Act. I do not find any reason to grant 100% waiver to the applicant. 20% amount is the minimum compensation prescribed under Section 138 of the NI Act. At the most the time to deposit compensation amount can be extended.

ORDER

- i. Criminal Application No.101 of 2024 is rejected and disposed of.
- ii. Time to deposit the amount is extended by eight weeks from today subject to the condition imposed by the appellate Court while suspending the sentence.

(PRAKASH D. NAIK, J.)