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IN THE HIGH COURT OF JUDICATURE AT BOMBAY CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.1188 OF 2024 IN CRIMINAL REVISION APPLICATION NO.91 OF 2024

Shri Mahakali Enterprises and Anr. ...Applicants

vs.

The State of Maharashtra and Anr. ...Respondents

Mr. Ramdas Hake Patil a/w Mr. Atharva Nalawade:	Advocate for Applicants.
Mr. Aniket A. Gawand:	Advocate for Respondent No.2.
Mr. Y.Y. Dabke:	APP for the State.

CORAM : S. M. MODAK, J.
DATE : 21st MARCH 2024

P. C. :-

1. Heard learned Advocate for the Applicants – Accused and learned Advocate for Respondent No.2 – complainant. Criminal Revision Application No.91 of 2024 was preferred against the order dated 21st October 2023 passed by the Appellate Court. This revision was already disposed of on 16th February 2024. While suspending the sentence for an offence under Section 138 of the Negotiable

Instruments Act, 1881, the Appellate Court directed the Applicants to deposit 30% of the cheque amount. This Court has reduced it to 20% as per order dated 16th February 2024.

2. It comes to **Rs.5,35,000/-**. Out of that the Applicant has directly transferred an amount of **Rs.3,35,000/-** to the Bank Account of the Respondent. It is not in dispute. Yet Applicant has to deposit **Rs.2 Lakhs**. That is why, this application is made. There are two prayers:-

- a. modify the order dated 16th February 2024 passed by this Court thereby restricting the condition to deposit Rs.3,35,000/- (which comes to 12.5% of Rs.5,35,000/-).
- b. further extension for two months be granted for depositing remaining amount by way of alternate prayer.

3. Learned Advocate for the Applicant made the following submissions:-

- (i) In fact, the total liability was Rs.10 Lakhs whereas, 4 cheques for an amount of Rs.21,25,000/- were obtained under duress. My attention is invited to paragraph 17 of the judgment passed by the trial Court.
- (ii) Reliance is placed on observations in case of *Jamboo*

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Development Corporation Ltd. & Ors.¹***

(iii) Again there is a reiteration of prayer that applicant is suffering from elephantiasis.

4. Prayer is strongly opposed on the ground that now there is no scope for modification and further extension is not justified. There is also contention raised that Applicant is habitual offender and in fact, he has sold the property at Dadar.

5. It is true that in ***Jamboo Bhadari*** (supra), the Hon'ble Supreme Court has interpreted about power of the Appellate Court to direct compensation as per Section 148 of the NI Act. Mainly there are three observations. They are :--

- (a) Condition to impose 20% is not absolute and it will be the discretion of the Court.
- (b) In exceptional case by recording reasons the Appellate Court can also dispense with that condition.
- (c) It is not necessary for the accused to plead about relaxation of the condition in suspension application.

1. 2023(10) SCC 446

6. Both the sides uptill now have already made submissions before the Appellate Court and that is how condition to deposit 30% was imposed. Whereas, for the first time in the disposed of Revision, contention was raised that the Applicant is suffering from elephantiasis. Though it was pleaded before the appellate Court, it seems that it was not argued before the Appellate Court. Considering the said fact only, this Court has reduced the amount from 30% to 20%. So the grounds taken before this Court are already considered.

7. Even the Applicant has deposited part of the amount. So at this stage, I do not think that case is made out for exception. At the most, Applicant can be granted more time to deposit remaining amount. The contention that liability was only for Rs.10 Lakhs and not Rs.21,25,000/- now cannot be considered as it is belatedly argued. So, I am inclined to grant 4 weeks' time to the Applicant to deposit remaining amount. Hence, order:-

ORDER

- (i) Applicant is granted 4 weeks' time to deposit remaining amount of Rs.2 Lakhs by way of online transfer in the Bank account of Respondent No.2.

- (ii) Furthermore, this Court now directs the Respondent No.2 to furnish undertaking within 3 weeks before the Appellate Court that he will refund the amount earlier paid and now to be paid along with interest as mentioned in Section 148 of the NI Act, if the Court directs.
- (iii) Respondent no.2 to send copy of the said undertaking to the applicant/their counsels in any case prior to expiry of 4 weeks period.

[S. M. MODAK, J.]