

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

CRIMINAL REVISION APPLICATION NO.575 OF 2017

Sushila Subhash Sabale ...Applicant
vs.
The State of Maharashtra and Anr. ...Respondents

**WITH
INTERIM APPLICATION NO.2825 OF 2022
IN
CRIMINAL REVISION APPLICATION NO.575 OF 2017**

Tulsiram Dhanaji Aahire ...Applicant

In the matter between

Sushila Subhash Sabale ...Applicant

vs.
The State of Maharashtra and Anr. ...Respondents

Mr. Amey Deshpande a/w Ms. Vandana Bait a/w Ms. Vandana Sontakke,
Advocate for the Applicant REVN/575/2017 & Respondent in
IA/2825/2022.

Mr. Rameshwar N. Gite a/w Mr. Rohit D. Gorade a/w Mr. Sushant Tare
Advocate for the Applicant in IA/2825/2022 & for Respondent No.2 in
REVN/575/2017.

APP for Respondent – State.

**CORAM : S. M. MODAK, J.
DATE : 17th JANUARY 2024**

P. C. :-

CRIMINAL REVISION APPLICATION NO.575 OF 2017

1. Heard learned Advocate for the Applicant – convicted accused and
learned Advocate for the Respondent – Complainant.

2. The Applicant is convicted by the Court of J.M.F.C., Nashik on 7th October 2015 for the offence punishable under section 138 of the Negotiable Instruments Act, 1881. The sentence is as follows :-

- (i) S.I. for six months and
- (ii) Fine of Rs.7,50,000/- and out of that fine amount, compensation of Rs.7,25,000/- is to be paid to the complainant.

3. Correctness of this judgment was challenged before the Court of Additional Sessions Judge, Nashik, however, the Appellant has failed.

4. In fact, the Revision is yet to be admitted.

5. On 5th January 2018, the Criminal Application No.566 of 2017 was decided and substantive sentence was suspended on furnishing bail and there was a condition to deposit Rs.2 Lakhs within four weeks. This amount is deposited and even this Court has permitted the complainant to withdraw the amount as per the order dated 26th August 2022 passed in Interim Application No.2825 of 2022.

6. While suspending the sentence, this Court has also considered the submission on behalf of the Applicant that she has deposited an amount of Rs.1 Lakh before the Appellate Court. For want of instructions, learned Advocate for the complainant is unable to confirm it. He had shown me a soft copy of receipt for Rs.1 Lakh of 27th November 2015. Let its photocopy be produced on record.

7. For admitting the revision, he made the following submission:-

- (i) The time limit was not followed by the complainant i.e. to say in respect of filing of the complaint within 30 days from the accrual of the cause of action, he gave the following days:-

Sr. No.	Events	Date
1.	Date of Notice	17 th May 2013
2.	Date of receipt of notice	22 nd May 2013
3.	Expiry of period of 15 days	6 th June 2013
4.	Last date for filing of the complaint	5/6 th July 2013
5.	Date of filing of the complaint	16 th July 2013

8. He invited my attention to paragraph 13 of the impugned judgment passed by the learned Appellate Court. According to him, the date of issuance of notice is important and not the date on which the complainant got knowledge about receipt of notice by the accused. He wants to rely upon the observation of the Supreme Court of any one judgment. He seeks time to place its copy on record. Whereas, the learned Advocate for the complainant supported those findings and contended that this issue cannot be gone into by the Revisional Court.

9. Second submission made on behalf of the accused is that Rs.7 Lakhs was paid to the husband of the present Applicant and that too in installment and in cash and there are no details. Whereas, according to learned Advocate for the complainant, this issue cannot be gone into in a

revisional jurisdiction, whereas, the Applicant's counsel submitted that if legally recoverable debt is not proved, erroneous finding can be set aside even by the revisional Court. He wants to rely upon few of the judgments but today he is not having those judgments. When the Court dictated this submission, learned Advocate for the Applicant tendered a copy of the observations in case of *Basalingappa vs. Mudibasappa*¹. In fact, he was already having a copy he ought to have tendered it at the beginning itself so that complainant's counsel could have perused it.

10. Both the parties need to be heard. Hence, issue of admission will be decided on the next date.

11. Stand over to 14th February 2024 'First on Board'.

Interim Application No.2825 of 2022

12. It is true that there are two prayers made by the complainant. One is for withdrawal of the amount of Rs.2 Lakhs deposited as per the order of this Court. This prayer is already granted. Second prayer is for issuing direction. Applicant - accused to deposit remaining amount of Rs.5,50,000/-. When this Court allowed withdrawal of Rs.2 Lakhs on 26th August 2022, Mr. Deshpande, learned Advocate for the Applicant expressed desire to file reply, however, till today reply is not filed.

13. In view of that, both the learned Advocates have shown readiness to argue this Interim Application on the basis of the available record.

1. 2019(5) SCC 418

14. Learned Advocate Shri Deshpande opposed the prayer for direction on the following grounds:-

- (i) Earlier Interim Application is allowed;
- (ii) When this Court has suspended the sentence on 5th January 2018, all the factors were considered and that is how, the Court has decided the quantum of Rs.2 Lakhs to be deposited;
- (iii) Once this quantum is decided, now this Court cannot issue further directions;

15. To support his prayer, learned Advocate for the complainant submitted that when the order dated 5th January 2018 was passed his client was not served. In fact, on the same day, by separate order notice was issued to his client.

16. The fact that complainant was not before the Court on 5th January 2018, certainly, he has got a right to ask for direction to deposit further amount. The amount of fine is Rs.7,50,000/-. Out of that, Rs.7,25,000/- is to be paid to the complainant out of them, the Applicant has deposited the following amount :-

- (a) Rs.1 Lakhs before the Appellate Court;
- (b) Rs.2 Lakhs as directed by this Court;

17. In nutshell, out of Rs.7,50,000/-, Rs. 3 Lakhs is already paid. It is true that there are certain guidelines incorporated in the provisions of

Negotiable Instruments Act by way of Section 148. Sub-section (1) empowers the Court to issue directions to deposit at least 20% of the fine or compensation. It is true that it talks about power of the Appellate Court. It does not say power of the Revisional Court. The intention of the legislature is that when the Appeal is filed, the findings are challenged. At the same time, the interest of the complainant also needs to be protected. Further, the Applicant has failed before the Appellate Court and now, the revision is yet to be admitted. So I am inclined to issue directions to deposit further amount but not entire remaining amount. In view of that, the following directions :-

ORDER

- (i) Let the Applicant – convicted accused to deposit an amount of Rs.2 Lakhs within a period of four weeks from today before the Court of J.M.F.C., Nashik;
- (ii) Once deposited, the complainant is at liberty to withdraw that amount on giving an undertaking that he will return the amount if so directed;
- (iii) Even the complainant is at liberty to apply for withdrawal of an amount of Rs.1 Lakh with an undertaking that he will return the amount, if so directed. This direction is applicable only if the amount is not withdrawn.

- (iv) Lastly, if this time limit is not adhered to, the Court may think of recalling the order of suspension.
- (v) Interim Application is disposed of.

[S. M. MODAK, J.]