

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

**INTERIM APPLICATION NO.3509 OF 2022  
IN  
CRIMINAL REVISION APPLICATION NO.326 OF 2019**

Ajit Kumar L. Matta ...Applicant

vs.

Ramesh Nandlal Jeswani and Anr. ...Respondents

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Mr. Bhushan U. Deshmukh, Advocate for the Applicant.

Mr. Murtaza Najmi i/b. Vinod Sharma Advocate for the Respondent No.1.

Mr. H.J. Dedhia, APP for Respondent – State.

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**CORAM : S. M. MODAK, J.**

**DATE : 22<sup>nd</sup> JANUARY 2024**

**P. C. :-**

**Interim Application No.3509 of 2022**

1. I have already heard learned Advocate for the Respondent No.2/  
Original informant and learned Advocate for the Revision Applicant-  
Convicted Accused on the last date.

2. Today, they have reiterated their submissions. It is true that the  
Court of Additional Chief Metropolitan Magistrate, Kurla on 4<sup>th</sup> February  
2015 has acquitted the Applicant for the offence punishable under  
sections 406, 420, 465, 467, 468 and 471 of Indian Penal Code, whereas,  
the Court of Additional Sessions Judge on 6<sup>th</sup> June 2019 on the Appeal  
preferred by the first informant convicted the Applicant for the offence  
punishable under section 406 of IPC whereas, acquittal for rest of the

offences is maintained. Sentence is as follows:-

- (i) R.I. for one year.
- (ii) Fine of Rs.50,000/-.
- (iii) PW1- Ajit Kumar Laxmandas Matta who is the Respondent No.2 be paid Rs.40,000/- out of the said fine amount.

3. This Court has suspended the substantive sentence on 8<sup>th</sup> July 2019. It is told that the amount of Rs.50,000/- is already deposited before the Additional Sessions Judge. So also on 8<sup>th</sup> July 2019, the Revision is also admitted. Now, by way of this Interim Application, the first informant is asking for the amount of Rs.40,000/-.

4. Learned Advocate for the Applicant relied upon clause (d) of sub-section (1) of section 357 and sub-section (4), whereas, the learned Advocate for the first informant relied upon the provisions of sub-section (2) of section 357 of the Cr.P.C.

5. After hearing them and after considering various sub-sections of section 357 of the Code, I am with the Revision Applicant. I am not inclined to consider the prayer. I will give the reasoning hereinafter.

6. It is true that as per sub-sections (1) and (3) of section 357, the Court can direct compensation to the victim. There is a difference in between these two sub-sections. As per sub-section (1), compensation can be awarded in following two contingencies:-

(a) When the Court imposes a sentence of fine only (not accompanied by substantive sentence).

(b) When the Court imposes substantive sentence and fine.

7. In such contingency, the compensation can be paid from the fine amount whereas sub-section (3) contemplates a situation wherein there is only sentence, it means only substantive sentence and not accompanied by sentence of fine. In such a contingency, in addition to substantive sentence, the Court can direct the convicted accused to pay certain amount by way of compensation.

8. In section 357, the legislators have used two terminologies; one is fine and another is compensation. But these terminologies have got definite meaning in the eyes of law. It is true that there is specific provision as per section 148 of the Negotiable Instruments Act. It says about deposit of 20% minimum from the amount of fine or compensation. Sub-section (3) empowers the Appellate Court to order release of amount to the complainant, whereas sub-section (2) of section 357 imposes restriction on the power of the Court to release the amount of fine, if the Appeal is pending. It is true that sub-section (4) of section 357 also empowers the Appellate and Revisional Court to pass only those orders which are permissible. It has to be read along with sub-section (2).

9. It is true that the present proceeding is a revision. But certainly similar analogy will be applicable. So, I am not inclined to allow the

prayer simply for the reason that Rs.40,000/- is to be paid from the amount of fine and there is no separate direction to accused to pay the compensation. Applicant has to wait till disposal of the Appeal.

**10.** Interim Application is disposed of.

**Criminal Revision Application No.326 of 2019**

**11.** There is a prayer to fix this Revision on the final hearing board as first informant is a Senior Citizen. The Applicant's counsel opposes.

**12.** So let the Respondent No.2 to file Interim Application.

**13.** In the meantime, let record and proceeding be called from the Court, wherever it is lying.

**14.** Stand over to **18<sup>th</sup> March 2024**.

**[S. M. MODAK, J.]**