

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

**INTERIM APPLICATION NO.4383 OF 2023
IN
CRIMINAL REVISION APPLICATION (ST) NO.22089 OF 2023**

Vijay Tekchandani ...Applicant

vs.

State of Maharashtra
Through the Government Pleader ...Respondents

Mr. Mayur V. Faria, Advocate for the Applicant.

Mr. Ajit Shobhawat i/b. AJS Legal, Advocate for the Respondent No.2.

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

CORAM : S. M. MODAK, J.

DATE : 17th JANUARY 2024

P. C. :-

INTERIM APPLICATION NO.4383 OF 2023

1. Heard learned Advocate for the Applicant – Convicted Accused, learned APP and learned Advocate for the Respondent No.2/ Complainant.

2. On his complaint, the present Applicant is convicted by the Court of Metropolitan Magistrate, Ballard Pier, Mumbai on 22nd January 2020 for the offence punishable under section 138 of the Negotiable Instruments Act. The following is the punishment:-

- (i) S.I. for six months;
- (ii) To pay compensation of Rs.70 Lakhs along with simple interest @ Rs.9% from the date of order till actual realisation.

3. The grievance of the Applicant is the learned Magistrate proceeded in his absence and who was under impression that his Advocate is attending the case. Against the said decision, he preferred Criminal Appeal No.11 of 2021. It was dismissed on 15th July 2023. The conviction and sentence both are confirmed, that is how the present Revision Application.

4. However, there is a delay of 28 days in filing Revision Application. That is why this Interim Application is moved. The prayer is opposed on behalf of the complainant. The Applicant claims that the impugned Judgment dated 15th July 2023 was uploaded on 24th July 2023 and certified copy was ready on 3rd August 2023 and it was issued on 31st August 2023.

5. In the hearing of a Criminal Appeal the presence of the party is not required. It can be argued through the Advocate. From the appearance, it is clear that the Applicant was represented by the learned Advocate. It is not that the applicant was unrepresented. However, opportunity to challenge the judgment needs to be granted. Subject to cost, delay can be condoned. In view of that, the following order:-

ORDER

- (i) Delay of 28 days is condoned subject to payment of cost of Rs.5,000/- to Kirtikar Law Library to be paid within two weeks from today.

(ii) Application is disposed of.

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6. One of the grounds taken in the Revision is the learned Metropolitan Magistrate was obliged to record the statement of the accused under section 313 of the Cr.P.C. However, it was not recorded and the case was disposed of. Even learned Additional Sessions Judge has erred in understanding the importance of recording of statement.

7. This is opposed on behalf of the Complainant - Respondent for the reason that they have taken steps in securing the presence of the Applicant by issuing non-bailable warrant also. However, it could not be executed and hence, it was dispensed with.

8. Let this question be kept open. Considering this limited controversy, let Revision Application be taken for final disposal at admission stage only.

9. Stand over to **6th February 2024** along with Interim Application (St) No.1259 of 2024 and Interim Application (St) No.1260 of 2024.

10. On the next date, the parties are at liberty to produce necessary documents.

[S. M. MODAK, J.]