

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

CRIMINAL REVISION APPLICATION NO. 37 OF 2024

Sadika Murad Ali Shaha

...Applicant

vs.

Sabira Nizam Solkar and another

...Respondents

WITH

INTERIM APPLICATION NO. 216 OF 2024

Mr. Rakesh Bhatkar alongwith Mr. Mohit Dalvi :-	Advocate for Applicant.
Mr. Vijay H. Kantharia alongwith Ms. Shubhada Salvi :-	Advocate for Respondent No.1.
Mr. Ashok Gawai :-	APP for Respondent No.2-State.

CORAM : S. M. MODAK, J.

DATE : 22nd JULY 2024

P.C. :-

1. Heard learned Advocate for the Applicant/convicted accused and the learned Advocate for the Respondent-Complainant.
2. The Court of JMFC, Debrukh has convicted the Applicant for the offence punishable under Section 138 of the Negotiable Instruments Act. The sentence is till rising of the Court and fine of

Rs.6,70,000/-. Out of that, Rs.6,55,910/- is to be paid to the Complainant towards compensation as per Section 357(1)(b) of the Code of Criminal Procedure. The cheque was issued towards hand-loan. It was denied by the Applicant. Complainant examined witnesses to show how she has raised the money. This fact is disputed by the Applicant and the Complainant's source of income is her maintenance and there is order of the Court which is placed on record by the Applicant. All these contentions were rejected by the learned Magistrate. When she filed an Appeal, it was dismissed.

3. My attention is invited to the observations in paragraph 22 of the Appellate Court Judgment. He has observed, "*no reasons were assigned or no specific order was passed while converting the trial. Trial is not vitiated.*" According to the learned Advocate for the Applicant following are the submissions :

- (i) Evidence was recorded before different Magistrates and case could not be completed before one Judge. This is violation of provision of Section 326(3) of Code of Criminal Procedure.
- (ii) Proviso to Section 143 of the Negotiable Instruments Act puts a restraint on the Magistrate to impose fine exceeding Rs.5000/-.

According to the learned Advocate for the Applicant these issues needs to be decided by the Revisional Court whereas the learned Advocate for the Complainant, there was no application made on behalf of the Accused to recall the witness as contemplated under Section 326(2) of the Code of Criminal Procedure.

5. There is no doubt that the Accused has deposited entire amount of fine. It is as follows :-

(i) Rs.1,34,000/- deposited before the Appellate Court (which was withdrawn also). Let the learned Advocate for the Complainant to verify.

(ii) An amount of Rs.5,21,910/- is deposited before the Civil Court, Devrukh. Notice is issued to the Complainant to withdraw the amount.

6. Today, detailed hearing could not be conducted. Both the sides needs to be heard on the above issues.

8. So at this juncture, the Complainant may be permitted to withdraw 50% of Rs.5,21,910/-. Hence, the order :

ORDER

(a) At this juncture, the Complainant is permitted to withdraw

50% of Rs.5,21,910/- alongwith accrued interest, if any on a condition of furnishing an undertaking that she will return the amount alongwith interest as directed by this Court.

9. Stand over to **19th August 2024**. To be listed **‘High on Board’**.

[S. M. MODAK, J.]