

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

REVISION APPLICATION NO. 182 OF 2024

Prakashchandra Tekchand Achhpal

...Applicant

vs.

The State of Maharashtra

...Respondent

**ALONGWITH
INTERIM APPLICATION NO. 1502 OF 2024
(NOT ON BOARD. TAKEN ON BOARD)**

Induprakash Tripathi i/by C. K. Tripathi	Advocate for the Applicant
Mr. A. D. Kamkhedkar	APP for the Respondent-State

CORAM : S. M. MODAK, J.

DATE : 10th APRIL 2024

P. C. :-

1. Heard learned Advocate Tripathi for the Applicant-convicted accused and learned APP for the Respondent-State. Interim Application No. 1502 of 2024, not on board. Taken on board.
2. The Court of the JMFC, Thane convicted him for the offence punishable under Section 138 of the Negotiable Instruments Act. The sentence is:- (i) Simple imprisonment for four months, (ii)

compensation of Rs. 9,00,000/-, at page no. 45.

3. His appeal was dismissed by the Court of the Additional Sessions Judge on 02/04/2024. He was taken into custody on that day itself.

4. Learned Advocate Tripathi has made the following submissions:-

(a) The Complainant has put up case of the issuance of the cheque towards discharge of the friendly loan. Whereas case put up by his client is issuance of 20 cheques by way of security towards payment of the fabric purchased by his client, out of that four cheques were honoured and remaining 16 cheques for Rs. 50,000/- each were dishonoured.

(b) In fact cheques were issued in the year 2006 and stop payment instructions were given to his bank and witness from bank is also examined. Though the instructions was given in the year 2007, cheques were deposited in the year 2012. According to him, both the Courts below have failed in concluding that the presumption is rebutted.

5. His contention can be considered when the matter will be argued at the time of the admission. It is true that in revision, there is limited scope as compared to wide scope in the appeal.

6. Out of the compensation of Rs. 9 Lakhs, Rs. 2,00,000/- is already deposited before the Appellate Court and the Applicant intends to deposit Rs. 1 Lakh more. It will be meager amount. It is true that the deposit of an amount is not mandatory condition but it is discretionary condition. However ultimately, the money can be returned to the Applicant if he succeeds in the revision. Hence the Order:-

ORDER

- a) Substantive sentence of the imprisonment for the offence punishable under Section 138 of the Negotiable Instruments Act is suspended during the pendency of the revision, subject to following conditions:-
- (i) Personal bond and Surety bond of Rs. 15,000/- be furnished before the Court of JMFC, Thane
 - (ii) Liberty to deposit cash amount of Rs. 15,000/- by way of temporary arrangement.
 - (iii) The bail be furnished before the trial Magistrate within two weeks.
 - (iv) The Applicant to deposit Rs. 2 Lakhs out of the compensation amount within a period of four weeks before the Court of JMFC, Thane.

7. If the Respondent-Complainant will ask for withdrawal of the amount, it will be decided after hearing the Applicant.
8. Issue notice to the Respondent before admission, returnable on 12th June 2024. Additionally, private notice is allowed and service affidavit be filed. Matter be kept on **12th June 2024**.
9. Interim application No. 1502 of 2024 is disposed of.

[S. M. MODAK, J.]