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



## CRIMINAL REVISION APPLICATION NO. 234 OF 2024
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## CRIMINAL REVISION APPLICATION NO. 238 OF 2024

Laxmi Power Cable Pvt. Ltd.
Liquidation : Controlled by
Official Liquidaotor ...Applicant

vs.

Zenith Wires Industries and Anr. ...Respondents

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| Mr.D.B.Patil a/w Mr.Dheeraj Dubey:- | Advocates for Applicant in all the Applications. |
| Ms.Sangita E. Phad:- | APP for Respondent No.2–State in Application Nos.234 of 2024 and 238 of 2024. |
| Mr.A.S.Gawai:- | APP for Respondent No.2–State in Application No.235 of 2024. |
| Mr.H.J.Dedhia:- | APP for Respondent No.2–State in Application No.236 of 2024. |
| Mr.A.D.Kamkhedkar:- | APP for Respondent No.2–State in Application No.237 of 2024. |

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

**DATE : 28th JUNE 2024**

**P. C. :-**

1. Heard learned Advocate Shri.Patil for the Applicants. The Applicant No.1 is the Company and the Applicant Nos.2 and 3 are the Directors. The Applicant No.1 – Company went into liquidation long back earlier to filing of the Complaints.

2. There were in all 5 Complaints filed in the year 2015 towards non payment of the 19 cheques. Both the parties adduced evidence before the trial Court. On behalf of the present Applicant, Accused No.3 – Dinesh Kukreja and Applicant No.4 – Dhiraj Kukreja have given evidence before the trial Court. Their copies are tendered. Let them be e-filed. So also, copy of Bank witness evidence be also e-filed. Predominantly, they took two defences:-

(a) Company went into liquidation and
(b) Payment of invoices was already made.

3. My attention is invited to the evidence of Dhiraj and more specifically Para No.11. He has said,

> "*though the accused company was in financial crisis, the payment of complainant company were regularly made and dues were cleared against the invoices*".

To prove the Bank entries, they have also examined the Bank witness. Its copy is shown to me. He has produced the Statement of Account.

4. The trial Court though has referred to above evidence, has not given any findings. All the Accused were convicted for the offence under Section 138 of the Negotiable Instruments Act, 1881 ("NI Act"). The sentence is as follows:-

(a) Accused Nos.3 and 4 to undergo simple imprisonment for six (6) months.

(b) Accused Nos.1, 3 and 4 to pay compensation. The amount is different in every case. The total comes to Rs.1,51,50,489/-.

5. Five Appeals were preferred. The substantive sentences were suspended on 27th July 2022 subject to deposit of 20% of the total compensation amount. The order is on Page No.32. It comes to Rs.30,30,097/-. As the condition is not complied with, the Complainant moved several applications for vacating the order of suspension of sentence.

6. Learned Additional Sessions Judge vide order dated 20th February 2024 was pleased to vacate the suspension order and that is why, present Revisions are filed. The order was signed later on.

Learned Advocate for the Applicants is praying for stay of the impugned order. Two grounds are taken. They are :--

One the Applicant No.1 went into liquidation and second the amount of cheques were already paid.

7. My attention is invited to the summary prepared on the basis of the statement brought by the witness No.3 for Canara Bank. **It shows, from 8th October 2013 to 12th July 2014, total amount of Rs.1,04,30,474/- is paid to the Complainant.** Whereas, my attention is invited to the observations in Para No.18 of the impugned order. Learned Judge observed:-

> *"lastly, whether pains were taken to adduce evidence by examining the Directors of the Company or by calling Bank witnesses to prove the factum of payment of cheque amount by R.T.G.S.? Thus, non light also thrown over this aspect".*

8. According to Mr.Patil, this observation is factually incorrect. The Appellate Court directed to issue conviction warrant. The Applicants apprehend that they will be arrested.

9. The contention about the payment made needs to be verified once the Complainant will put in appearance. At this stage, it can very

well be said that evidence to show the payment was very much adduced before the trial Court. The observations are *prima facie* factually incorrect. So, I am inclined to stay the impugned order till the next date.

10. In view of that, following order is passed:-

**ORDER**

(i) The order dated 20th February 2024 is stayed till the next date.

(ii) The suspension granted originally is restored till the next date.

(iii) Issue notice before Admission to Respondent No.1 returnable on **19th July 2024**.

(iv) It is submitted that they have already served the Respondent No.1. They are at liberty to file an Affidavit.

11. Parties to act on an authenticated copy of this order.

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