

**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 Liquidator

...Applicant

vs.

Zenith Wires Industries and Anr.

...Respondents

Mr. D. B. Patil :-	Advocate for Applicant in all Revision Applications.
Mr. Amardeep Bhattacharya i/b. Mr. Ritesh Mishra :-	Advocate for Respondent No. 1.
Mr. A. S. Gawai :-	APP for Respondent No. 2 – State in Revision Application Nos. 234 of 2024 and 235 of 2024.
Mr. H. J. Dedhia :-	APP for Respondent No. 2 – State in Revision Application Nos. 236 of 2024, 237 of 2024 and 238 of 2024.

CORAM : S. M. MODAK, J.

DATE : 19th JULY 2024

P. C. :-

1. Heard learned Advocate Mr. Patil for the Applicant and learned Advocate Mr. Bhattacharya for the Respondent / Complainant.

2. The legality of the order dated 20th February 2024 thereby recalling the order of suspension is challenged in all these Revisions.

There are separate orders passed in five (05) Appeals. The said orders were passed on an application moved by the original Complainant for recalling suspension. The ground is non-deposit of 20% of the amount of compensation imposed by the Appellate Court while suspending the substantive sentence.

3. As per the order dated 28th June 2024 I have stayed operation of the said order and suspension was restored till today.

Objection about maintainability

4. Learned Advocate Mr. Bhattacharya raised preliminary objection about maintainability of Revision because the impugned order is an interlocutory order. He relied on the observations in case of *Bapuji*

*Murugesan vs. Mythili Rajagopalan*¹ by the High Court of Judicature at Madras. All the facts are similar. There also there was a conviction for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 [‘N. I. Act’] and when the Appeal was preferred, the Appellate Court directed the accused to deposit 15% of the cheque amount. It was challenged before the High Court. It was held “it was an interlocutory order”. The reason is due to passing of the said order the proceeding is not culminated.

5. Learned Advocate Mr. Patil disputed this contention for two reasons. **One** - The order is final considering it’s nature and consequences; and **Second** – This is a bar as to maintainability as incorporated in sub-section 2 of **Section 397** of the Criminal Procedure Code [Cr.P.C.] whereas power of Revision before this Court is wide under Section 401 of Cr.P.C.

Consideration

6. I have gone through the observations in *Bapuji’s Case*. There cannot be a dispute about the proposition that Revision is not maintainable against an interlocutory order. Whereas an order is

1 . (2022) 3 MLJ (CrI) 411.

interlocutory or final is the subject matter of controversy in many judgments. The nature of an order generally depends upon the following factors :-

- (i) At stage the order is passed;
- (ii) Whether the rights of the parties are finally decided;
- (iii) If the order is not complied, what are consequences.

1. If we applied these tests to the impugned order what we find is certainly this order is passed at an interim stage. Certainly by passing of the order, the Appeals are not finally decided. “***Whether by passing of the order, the final disposal of the Appeal is the test or whether the final disposal of the issue involved in that Application***” is the test. Generally there are various orders passed during the pendency of any proceedings. They never culminates the proceedings. But certainly by passing those orders, the issues raised at that time are decided.

7. It is important to note what is the issue raised in the Application before the Appellate Court. The grievance of the Complainant is “the entire amount of 20% is not deposited and that is how there is a breach of an order”. If there is a breach and if the grievance is allowed, Court has to see what are the rights of the parties which are affected. Once the

amount of compensation is to be paid post conviction, the Complainant gets right to withdraw that amount. Because such compensation is to be recovered as per the provisions of Section 421 of Cr.P.C.. There is difference in between the compensation to be awarded as per the provisions of **Section 143-A of N. I. Act** and as per the provisions of **Section 148** of the N. I. Act. As per sub-section 5 to Section 143-A of the said Act, the interim compensation during the pendency of the proceeding can be recovered by way of fine. But compensation under Section 148 of the said Act is post conviction and there are remedies available in Cr.P.C. itself for it's recovery.

8. The Accused is having right to putforth before the Appellate Court what prevented from complying the order. The justification may be accepted or may not be accepted. But certainly he has got right to oppose the prayer. It may happen that after imposition of the condition, there may be new developments - for example settlement, affecting finanancial capability of the accused. He can certainly point out to the Appellate Court about justification for non-compliance of the order. Now, Court has to see what are the consequences if the grievance is accepted. **From the Complainant's point of view**, he gets a right to request the Court to send the Accused to jail for undergoing

the sentence. So certainly it is having drastic consequences. **If considered from all these angles, this Court feels that the order vacating suspension cannot be said to be an interlocutory order.** With respect to the observations made in **Bapuji's** case, I do not agree with those observations.

9. The High Court of Madras has opined (paragraph No. 15) that the directions to deposit the amount is only matter of procedure and the rights are not determined. I respectfully disagree for the reasons mentioned above. So the objection as to maintainability is turned down.

About the facts

10. Mr. Patil made following submissions :-

- (i) When the Appellate Court imposed condition to deposit 20% amount on 27th July 2020 at that time the observations of Hon'ble Supreme Court in **Jamboo Bhandari vs. M. P. State Industrial Development Corporation Ltd.**² was not there. (This was delivered on 4th September 2023).
- (ii) The learned Appellate Judge while making the observations in paragraph No.18 has not considered two factual aspects. They are as follows :-

- (a) The answer is given by the witness Dhiraj in paragraph

2 . 2023 SCC OnLine SC 1204

No.11 -

“though the accused company was in financial crisis the payment of Complainant Company were regularly made and dues were cleared against invoices”.

- (b) Secondly, Bank witness was examined to prove the entries in the account about the payment made by the Accused to the Complainant. What will be the effect of this piece of evidence, was not considered by the Appellate Court.

11. Whether it was pointed out to him or not is immaterial but the fact remains the Appellate Court made observations in paragraph No. 18 as follows :-

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

12. So above observations were made without considering evidence referred above. For this reason I am inclined to remand the matter back to the Appellate Court for considering the Application for recalling the suspension order.

13. It is true that out of 20% amount, the Accused has paid certain amount before the trial Court. The order imposing condition of 20% is not challenged by the Accused. The explanation offered is the judgment in **Jamboo Bhandari** (supra) is delivered later on. Be that as it may, the Accused could have challenged that condition otherwise also. However, I am permitting the Accused persons to oppose the prayer for recalling the suspension order on the grounds raised before me because it affects their substantial rights.

14. Be that as it may, the Accused is required to deposit the remaining amount of compensation before the Appellate Court. The total amount of 20% comes to ₹31,00,000/- (Rupees Thirty One Lakh only). ₹15,00,000/- (Rupees Fifteen Lakh only) is already deposited. The Accused can deposit remaining amount of ₹16,00,000/- (Rupees Sixteen Lakh only) before the Appellate Court. Hence the order :-

ORDER

- (i) The Revisions are partly allowed.
- (ii) The orders dated 20th February 2024 passed by the Court of Additional Sessions Judge in Criminal Appeals No.260 of 2022, 261 of 2022, 262 of 2022, 263 of 2022 and 264 of 2022. are set aside.
- (iii) The Applications for recalling suspension order are restored.

- (iv) The Appellate Court to proceed with those applications afresh by hearing both sides.
- (v) The Applicant to deposit remaining amount of ₹16,00,000/- (Rupees Sixteen Lakh only) before the Appellate Court within four (4) weeks from today.
- (vi) Let the Appellate Court to decide all those Applications on it's own merits without being influenced by above observations.

15. Revision applications and interim application are disposed of.

Parties to act on authenticated copy.

[S. M. MODAK, J.]

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