

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.566 OF 2024

Adinath Balaso Madke .. Applicant
Versus
Dr. Shah Orthopedics, Miraj and Anr. .. Respondents

WITH
INTERIM APPLICATION NO.4278 OF 2024
IN
CRIMINAL REVISION APPLICATION NO.566 OF 2024

Adinath Balaso Madke .. Applicant
Versus
Dr. Shah Orthopedics, Miraj and Anr. .. Respondents

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- Mr. Nagesh Chavan a/w. Mr. Sandip Khandekar, Advocate for Applicant.

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CORAM : MILIND N. JADHAV, J.
DATE : OCTOBER 16, 2024

P.C.:

- 1.** Heard Mr. Chavan, learned Advocate for Applicant.
- 2.** Mr. Chavan seeks urgent intervention of this Court in the present matter. He has filed this Criminal Revision Application on behalf of the Applicant yesterday on which date he had an e-filing number and had mentioned the matter for urgent listing today. The Application has been registered and lodged in the meanwhile. Interim Application No.4278 of 2024 seeks urgent intervention of the Court in view of the fact that Revision Applicant has been arrested on

09.10.2024 on the date of the passing of the impugned order itself and is in custody.

3. Mr. Chavan has taken me to the pleadings and records of the present case. Briefly stated, it is seen that dispute in the present case is between the original complainant and Revision Applicant – original Accused pertaining to proceedings under Section 138 of the Negotiable Instruments Act, 1881 (for short '**N.I.Act**').

4. The facts in the case are infact rather peculiar. It is seen that complainant engaged the services of the Applicant for renovation of his dispensary / clinic / hospital's operation theatre. Applicant is a Contractor. He gave a quotation of Rs.5,58,000/- to the complainant out of which Rs.3,68,000/- was initially paid over to the Applicant and balance of Rs.2,00,000/- were paid by the complainant to two individuals named Mr. Rahul Mangave and Mr. Abhijit Naravade on the directions of Applicant as averred. It was complainant's case that thereafter Applicant infact started the work of renovation of the hospital of the complainant but did not complete the same. Due to certain disputes which had arisen at the then time, parties agreed to settle and Applicant agreed to return back the amount of Rs.5,58,000/- and in that regard executed settlement Agreement dated 30.09.2010. All this is part of the record before the Trial Court in proceedings under Section 138 of the N.I.Act. Under the settlement Agreement,

cheque was issued by Applicant for Rs.5,58,000/- which was dishonoured leading to filing of the original complaint before the Trial Court.

5. Complaint was prosecuted resultantly leading to passing of the impugned judgment dated 17.03.2012 in Summary Criminal Case No.17 of 2011 which is appended at page No.62 of Revision Application. By virtue of the said judgment, Applicant has been convicted for committing offence under Section 138 of N.I.Act for a period of nine months rigorous imprisonment, as also been fined with an amount of Rs.5,58,000/- and in default of non-payment of fine to suffer additional two months simple imprisonment.

6. Mr. Chavan would submit that within two days after passing of the impugned judgment by the learned Trial Court, Applicant filed Criminal Appeal No.95 of 2012, copy of which is appended at Exhibit-D, page No.81 of the Application. He would submit that on 20.03.2012, the sentence of conviction was suspended by the learned Appellate Court on the condition of deposit of Rs.1,00,000/- by the Applicant in the Court. That order is not annexed to the Application but averment to that effect is made in paragraph No.6 of the Application. I have perused paragraph No.6. Mr. Chavan informs the Court that there is a typographical mistake in line No.1 on page No.13 of paragraph No.6 and the date as 20.03.2003 ought to be read as

20.03.2012. I permit him to carry out the necessary correction in my presence immediately which has been carried out forthwith by him and the same has been endorsed by me. On perusing the twin orders and verifying the twin receipts which are appended on page Nos.85 and 86 of the Application, it is seen that amount of Rs.1,00,000/- has been deposited by the Applicant in March – 2012 as directed by the Court and sentence granted by Trial Court is suspended since then.

7. It is thereafter seen that on 09.10.2024, the impugned judgment by the Appeal Court in Criminal Case No.195 of 2012 has been passed. By virtue of the said impugned judgment, the Criminal Appeal has been dismissed and bail bonds of the Applicant stood cancelled. The judgment is pronounced in open Court with direction to inform the Trial Court accordingly. Mr. Chavan would inform the Court that on the same date itself when the Applicant had attended the District Court for delivery and pronouncement of the impugned judgment, he was taken into custody by the police and since 09.10.2024, he has been imprisoned. He would submit that present Criminal Revision Application has been filed on 15.10.2024 after receiving instructions and this Court is moved immediately alongwith Interim Application for seeking dispensation of the sentence in view of the substantial challenge in the Application.

8. Mr. Chavan would be candid with the Court and would

submit that Court can put the Applicant to appropriate terms as deemed fit by the Court but in the interest of justice suspend his sentence for which he has been arrested at present and more specifically in view of the fact that learned Appellate Court had specifically suspended the sentence on him depositing the amount of Rs.1,00,000/- on 20.03.2012.

9. I have heard Mr. Chavan and perused the record of the case. I have perused the twin judgments passed by the Courts below. *Prima facie*, on going through the judgments and evidence considered, it is clearly seen that it is not a case where Applicant has taken the money and not done any work for the original complainant. It is the complainant's own case that after taking the initial amount of Rs.3,68,000/- and thereafter receiving another Rs.2,00,000/- through his acquaintances, the Applicant had infact started the work of renovation of the operation theatre in the hospital of the complainant. There is no due consideration of this fact in both the twin judgments which can be seen *prima facie*. There is also another issue which has been raised with respect to the valuation and value of the work done by the Applicant which also requires consideration of this Court as it should not lead to any injustice being meted out to either of the parties. The case of Applicant of completing work in excess of Rs.8,56,700/-, has been rejected by the Courts below due to want of material particulars.

10. Be that as it may, in view of the aforementioned facts which are *prima facie* glaring, this is a case where custody of the Applicant is not really required. It will enable him to show his *bonafides*. However allowing the Applicant to be released would not be unconditional. Hence, I direct the Applicant to deposit a further amount of Rs.3,00,000/- in the Trial Court to show his *bonafides* as a condition.

11. Mr. Chavan would inform the Court that only if Applicant is released, he will be in a position to accumulate and gather the money for deposit. He would also submit that in view of the impending Diwali festival it would be a little difficult for Applicant to gather the money and seeks some liberty in terms of time to the Applicant. The submission made by Mr. Chavan undoubtedly requires to be considered in the interest of justice.

12. The Applicant is directed to be immediately released from custody today itself. The Jail Superintendent / Prison Authority, Sangli District Jail shall take immediate cognizance of a server copy of this order and ensure that Applicant is released from jail immediately today itself. The Registrar Judicial – II, High Court, Bombay shall ensure that copy of this order is served upon the concerned Jail Superintendent / prison Authority for immediate compliance for release of the Applicant today itself.

13. However, the aforesaid release is not unconditional. The

Applicant is directed to deposit the amount of Rs.3,00,000/- as directed by this Court within a period of six weeks as requested by Mr. Chavan with the Trial Court after his release. Needless to state, if the aforesaid amount is not deposited by the Applicant with the Trial Court as directed by this Court, no extension of time whatsoever shall be considered and without recourse to this Court, the suspension of sentence any further as directed by this order and release of the Applicant by this order shall immediately stand cancelled. If Applicant defaults, this Court specifically directs the enforcement agencies to ensure that Applicant is immediately apprehended and sent to prison for continuation of his balance sentence. However on deposit of the amount of Rs.3,00,000/-, his further period shall stand suspended until the present Criminal Revision Application is decided. This Court shall consider the present Criminal Revision Application on its own merits and in accordance with law.

14. In view of the above directions and order, issue notice to the Respondents. Humdast permitted. In addition to Court's notice, Applicant is directed to serve the Respondents a copy of this order and copy of the Criminal Revision Application and inform them about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof. Respondents are directed to file Affidavit-in-Reply to the Criminal Revision Application on or before the next date.

15. In my opinion deposit of Rs.3,00,000/- by the Applicant would be an adequate measure to consider the present Interim Application filed by the Applicant. In view of the above order, Interim Application is allowed and disposed in the above terms.

16. Needless to state that Respondent – original complainant shall be at liberty to make appropriate Application if it so desires to withdraw the deposited amount.

17. List the Criminal Revision Application on **27th November, 2024.**

H. H. SAWANT

[MILIND N. JADHAV, J.]

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