



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO.293 OF 2025

Haresh Hasmukh Rambhiya,
Age-46 years, Occu- Agri,
R/o. Shivaji Chowk, Daund,
Tq. Daund, Dist. Pune

...APPLICANT
[Ori. Accused]

VERSUS

1. Afjal Husenkhan Pathan,
Age-50 years, Occu- Business,
R/o. Mulani Galli, Near Palika Office,
Kedgaon Deviche, Ahmednagar

2. The State of Maharashtra

...RESPONDENTS
[No.1 is Ori. Complainant
No.2 is a formal party]

Ms Namrata S. Bobade, Advocate through VC a/w Mr. Rajat Untwal,
Advocate for the applicant
Mr. Abhijt C. Darandale, Advocate for the respondent No.1
Mr. R. K. Ingole, APP for the respondents/State

CORAM : ABHAY J. MANTRI, J.

DATE : 13th OCTOBER, 2025

ORAL JUDGMENT :

1. The applicant/original accused aggrieved by the order dated 30-03-2024 passed by the learned Additional Sessions Judge, Ahmednagar, below Exh. 1 in Criminal Appeal No. 261/2022, whereby the appeal was dismissed for non-compliance with the undertaking (Exh. 18), has preferred this revision.

2. Heard the learned advocate for the parties at length. Perused the impugned order and record. I have also gone through the judgments relied on by the learned advocates for both parties.

3. At the outset, it appears that the respondent/complainant had filed the proceeding under Section 138 of the Negotiable Instruments Act (for short, the '*N.I. Act*') against the applicant. After considering the evidence on record, the learned Magistrate allowed the application and convicted the applicant for the offence punishable under Section 138 of the N.I. Act and sentenced him to suffer simple imprisonment for six months and to pay an amount of Rs.8 lakhs [Rs. Eight Lakhs Only] to the complainant as compensation.

4. Being aggrieved by the said order, the applicant/accused preferred the appeal before the learned Sessions Court. The learned Sessions Court, while passing the order below Exh. 5, directed the applicant to deposit 20% of the compensation amount in the court within a period of one month. The applicant has also challenged the said conditional order in Criminal Writ Petition No.193/2023, wherein this court, by order dated 10-03-2023, disposed of the petition by directing the applicant to deposit 20% of the amount of the compensation before the learned Sessions Court as per his undertaking within a period of two weeks from the said order.

5. It further appears that the applicant failed to comply with the conditional order passed by the learned Additional Sessions judge and this court in Cri. Writ Petition No. 193/2023. Therefore, the learned Magistrate on 30-03-2024, dismissed the appeal for non-compliance of the undertaking (Exh. 18). Hence, this revision application.

6. The learned advocate for the applicant vehemently contended that the appellate court erred in dismissing the appeal in default for non-compliance with the conditional order passed by the learned Additional Sessions Judge.

7. To buttress her submissions, she has relied on the judgment of the Hon'ble Apex Court in Rakesh Ranjan Shrivastava Vs State of Jharkhand reported in (2024) 4 SCC 419, Dhananjay Rai Alias Guddu Vs State of Bihar reported in (2022) 14 SCC 95 and Vijay D. Salvi Vs State of Maharashtra reported in 2007 SCC Online SC 730 and submitted that in view of the law laid down in the above cited judgments the revision application be allowed and impugned order be set aside.

8. *Per contra*, the learned advocate for the respondent/complainant at the outset argued that revision is not maintainable. When he was asked to satisfy the same, he failed to satisfy the same. However, he pointed out sections 382, 384 and 385

of the Code of Criminal Procedure and submitted that revision is not maintainable in view of the same. Similarly, he has relied on the decision in Daulat Singh V. The State of Madhya Pradesh, Special Leave Petition diary No. (s) 20900/2024, and submitted that the High Court, in exercise of its inherent power, may grant an exemption from surrendering in a particular case. Therefore, he submitted that the revision is not maintainable.

9. The second limb of his argument is that, in view of the decision in Dharmendrakumar Vs State of Maharashtra, reported in 2019 All M.R. (Cri) 2688, (para 12) and Nandkumar Munnaswami Pilley v/s State of Maharashtra, 2007(6) AIR Bom 337 (para 6) the learned appellate court can summarily dismiss the appeal under Sections 372, 382, 383, 384 & 385 in view of the law laid down in the said case. He has pointed out paragraphs 6 and 12 of the respective judgments.

10. Having heard the learned advocate for the parties, a short question arises in the revision, “*whether the appeal against the conviction filed by the accused under sub-section 2 of Section 374 of the Code of Criminal Procedure can be dismissed on the ground that the applicant/accused failed to comply with the direction given by the learned appellate court as well as this court?*”.

11. It is pertinent to note that the learned Advocate for the respondent/original complainant failed to point out any provision for dismissal of the appeal in default for non-compliance with any order.

12. I have perused the order passed by the learned appellate court. I would like to reproduce the optative part of the order:

“The criminal appeal No. 261/2022 is dismissed for non-compliance of undertaking (Exh. 18)”.

13. A bare perusal of the said order, it is evident that the appellate court has dismissed the appeal for non-compliance of the undertaking (Exh. 18), not summarily dismissed the same on merits. Undisputedly, the appeal was not dismissed after considering the material produced before it, on merits, but it was dismissed for non-compliance of the undertaking (Exh. 18). The Hon’ble Apex Court in Vijay Salvi (supra), Rakesh Shrivastava (supra) & Dhananjay Rai (supra) has categorically held that no appeal could be dismissed for non-compliance of the order or the order passed for deposit of compensation amount. But, the procedure for recovering the said amount is given in Chapter 23 of the Cr. P. C. from section 417 to 429.

14. Undisputedly, the impugned order itself indicates that the learned Judge without giving an opportunity to the applicant or without dealing with the matter on merits, dismissed the same for non-compliance of order/undertaking and therefore, in view of the mandate in the above referred judgments, the impugned judgment cannot be sustained in the eyes of law and same is liable to be set aside in the revision.

15. Perused the judgment in *Daulat Singh*. However, the facts in the said case are distinct from the case at hand, as in the said case, the High Court has dismissed the application seeking an exemption from surrendering the accused before the court as not maintainable. However, in the case at hand, this court has not passed any order for the grant of exemption, nor has it ordered that the applicant surrender himself before the appellate court. But the applicant is challenging the dismissal of the appeal for non-compliance with the undertaking. Therefore, observations made in the said decision hardly assist the respondent in supporting his contention.

16. The learned appellate court can indisputably dismiss the appeal under Sections 372, 382, 383, 384, and 385 after considering the examining the material on record and the merits of the case, in view of the law laid down in Dharmendrakumar and Nandkumar Pilley (Supra). But not for non-compliance with the order. Therefore,

observations made in the above judgments do not apply to the case at hand.

17. Apart from that, in view of the law laid down in the Vijay Salvi (supra), Rakesh Shrivastava (supra) & Dhananjay Rai (supra) the appellate court is not empowered to dismiss the appeal for non-compliance of the order to deposit of 20% of the compensation amount or failed to deposit part compensation amount by the appellant before the learned Magistrate as it does not take away the right of the accused to defend the prosecution and therefore, the law laid down in the said judgments are applicable in the case in hand.

18. Thus, considering the above discussion, in my view, the order passed by the learned Additional Sessions Judge cannot be sustained in the eyes of the law. Consequently, the criminal revision application is allowed. The impugned order dated 30-03-2024 passed below Exh. 1 in Criminal Appeal No.261/2022 is hereby quashed and set aside, and said criminal appeal No.261/2022 is restored to its original position.

19. It is pertinent to note that the applicant has not complied with the order passed by the learned appellate court or the undertaking given as per the direction of this court. The learned appellate court may execute the conditional order as contemplated

under Sections 417 to 430 of the Cr. P. C.

20. The learned appellate court is directed to take necessary steps to ensure compliance with its order or secure the applicant's presence before the court.

21. Inform the learned appellate court accordingly.

22. In view of the above, the criminal revision application stands disposed of.

[ABHAY J. MANTRI, J.]

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