



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

CRIMINAL APPLICATION NO. 2710 OF 2024

Gatrod Agro Bio-fuels Private Ltd
and others .. Applicants

Versus

Garg Distilleries Private Ltd
Through Its Manager
Mahesh Gowardhandas Agrawal .. Respondent

AND

CRIMINAL APPLICATION NO. 2711 OF 2024

Gatrod Agro Bio-fuels Private Ltd
and others .. Applicants

Versus

Garg Distilleries Private Ltd
Through Its Manager
Mahesh Gowardhandas Agrawal .. Respondent

AND

CRIMINAL APPLICATION NO. 2715 OF 2024

Gatrod Agro Bio-fuels Private Ltd
and others .. Applicants

Versus

Garg Distilleries Private Ltd
Through Its Manager
Mahesh Gowardhandas Agrawal .. Respondent

AND

CRIMINAL APPLICATION NO. 2780 OF 2024

Gatrod Agro Bio-fuels Private Ltd
and others .. Applicants

Versus

Garg Distilleries Private Ltd
Through Its Manager

Mahesh Gowardhandas Agrawal

.. Respondent

Shri Surendra V. Suryawanshi, Advocate for the Applicants in all matters.

Shri Subhodh P. Shan, Advocate for the Respondent in all matters.

CORAM : SHAILESH P. BRAHME, J.

DATE : 05TH MAY, 2025.

FINAL ORDER :

. Heard both sides finally at the admission stage considering exigency in the matters.

2. These criminal applications are emanating from common facts and circumstances from prosecution lodged by the respondent U/Sec. 138 of the Negotiable Instruments Act (for short "N. I. Act") against the applicants.

3. Respondent had supplied material to the applicants and for that purpose cheques in question were issued for the amount of Rs. 30,62,800/- in two matters and of Rs. 32,50,000/- in the remaining two matters. Those were dishonoured giving cause of action to the respondent to prefer S.C.C. No. 936 of 2011, S.C.C. No. 934 of 2011, S.C.C. No. 935 of 2011 and S.C.C. No. 933 of 2011, against the applicants. The Trial Magistrate convicted the applicants vide district judgment and order dated 29.04.2024 by imposing sentence to undergo simple imprisonment for three (03) months and payment of compensation of double the amount of cheques in question.

4. Being aggrieved applicants preferred appeals before the Sessions Judge along with distinct applications below Exhibit 04 in each appeal for suspension of sentence U/Sec. 389 of the Cr. P. C. Those applications were contested by the respondent. By impugned orders dated 28.05.2024, those were allowed granting stay to the execution of sentence, but imposing condition of depositing 20% of the amount of compensation within stipulated period. The amount deposited was directed to be disbursed to the respondent/complainant on certain conditions.

5. Learned counsel for the applicants submit that impugned orders in all applications are unreasoned and, therefore, perverse. It is contended that the case put forth by the applicants for suspending the sentence by dispensing with deposit of 20% of the amount of compensation has not at all been dealt with by the learned Judge below. Learned counsel would submit that rule is to suspend the sentence without imposing any condition U/Sec. 389 of the Cr. P. C. and in exceptional circumstances recourse to Sec. 148 of the N. I. Act can be had. He would rely upon judgment of the Supreme Court in the case of Jamboo Bandhari Vs. Madhya Pradesh State Industrial Development Corporation Ltd. and others reported in (2023) 10 SCC 446 and Division Bench of Kerala High Court in the case of *P. Sreenivasan Vs. Babu Raj* reported in *AIR Online 2024 Ker 141*.

6. Per contra, Mr. Subodh P. Shah, learned counsel for the

respondent would vehemently oppose the submissions of the learned counsel for the applicants. He would submit that impugned orders reflect application of mind and considering overall circumstances including that prosecution was lodged in the year 2011 and thirteen long years were consumed for arriving at conclusion, conditional orders were passed. It is submitted that this Court can consider the matters on merits instead of relegating parties to the lower Appellate Court for decision afresh. He would rely on the judgment of the Supreme Court in the matter of Muskan Enterprises and another Vs. State of Punjab and another reported in *2024 SCC OnLine SC 4107* and more specifically para No. 26 of the judgment to buttress the submission that applicants do not have any case for grant of suspension of sentence. In any case condition of depositing 20% of the amount of compensation is required to be confirmed.

7. I have considered rival submissions of the parties. I have also gone through impugned orders passed below Exhibit 4 by the lower appellate Court. I have also gone through application Exhibit 04 submitted by the applicants seeking suspension to the sentence U/Sec. 389 of the Cr. P. C.

8. Impugned orders are totally unreasoned. It runs into five paragraphs and totally silent on the reasons for imposing condition of deposit of 20% of the amount of compensation. From the applications at Exhibit 04, it can be seen that applicants solicited suspension by dispensing with the condition on merits of

the matters. It was incumbent upon the lower appellate Court to deal with those submissions by assigning reasons as to why those are not acceptable. There reflects total non application of mind by the lower appellate Court.

9. Though learned counsel Mr. Shah insisted for deciding the applications by this Court only for suspension of sentence, the remedy for the applicants is statutory and it would be in the interest of justice to relegate matters to the lower appellate Court for deciding the matters afresh. The decision of the applications at Exhibit 04 by this Court is likely to deprive either of the parties an opportunity to approach one forum. The law laid down by the Supreme Court in the matter of Jamboo Bandhari Vs. Madhya Pradesh State Industrial Development Corporation Ltd. and others (supra) and latest judgment of the Supreme Court in the matter of Muskan Enterprises and another Vs. State of Punjab and another (supra) would be guiding for deciding the applications at Exhibit 04. The proposition of law laid down by the Supreme Court needs to be considered by the lower appellate Court.

10. Although, I am inclined to remand the matters for its fresh disposal before the lower Appellate Court, I am inclined to direct the applicants to deposit some amount before the lower Appellate Court. The transaction between the parties appears to be commercial in nature and the respondent has initiated the proceedings in the year 2011. Considering nature of the transaction, it would be in the interest of justice to direct the

applicants to deposit exemplary amount before the lower Appellate Court.

11. The proposition of law and the parameters to be taken into account while considering suspension of sentence are stated in para Nos. 26 and 27 of the judgment in the case of Muskan Enterprises and another Vs. State of Punjab and another (supra). The lower Appellate Court shall decide the matters in the wake of those principles. I, therefore, find that impugned orders are unsustainable and liable to be quashed. I, therefore, pass following order.

O R D E R

- a. The criminal applications are allowed.
- b. Impugned orders dated 28.05.2024 passed below Exhibit 04 in Criminal Appeal No. 40 of 2024, Criminal Appeal 38 of 2024, Criminal Appeal No. 39 of 2024 and Criminal Appeal No. 37 of 2024 are quashed and set aside.
- c. The appellate Court that is Additional Sessions Judge, Dhule shall reconsider applications Exhibit 04 by extending opportunity of hearing to both the parties and decide it on its own merits within a period of two (02) months from the date of appearance of the parties.
- d. The parties shall be at liberty to substantiate their pleas by

presenting relevant material to support their contention for the purpose of suspension of sentence U/Sec. 389 of the Cr. P. C. only.

e. Appellate Court shall decide the matters in the wake of principles laid down by the Supreme Court in the matters referred above on the merits of the applications Exhibit 04.

f. Applicants shall deposit an amount of Rs. 1,00,000/- (Rs. One Lakh only) in every matter before the lower appellate Court within a period of three (03) weeks from today, which shall not be disbursed to the respondent and it shall be subject to further decision on applications below Exhibit 04.

g. Parties shall appear before the lower Appellate Court on 13.05.2025.

h. The criminal applications are disposed of in above terms.

[SHAILESH P. BRAHME J.]

bsb/May 25