



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL REVISION APPLICATION NO. 130 OF 2024

Shri Mohammad Hussain Gulam Ahmad,
Age Major, Occ. Business,
R/o Plot No. 180, Near Five Star Bakary,
Habib Nagar, Teka, Nagpur

.....APPLICANT

...V E R S U S...

1. Shri Mohammad Ibrahim Gulab Ahmad,
Age 43 yrs, Occ. Business,
2. Rukhsana Bano Nasaruddin,
Age 61 yrs, occ. Nil,
3. Kanija Bano Moh. Afzal,
Age 62 yrs, occ. Household,
4. Johada @ Jayada Bano Mohd. Shakil
Age 48 yrs, Occ. Household,
5. Aarfana Begum Mohd. Sayeed,
Age 58 yrs, Occ. Household,
6. Shri Mohammad Hussain Jikar Dhanani,
Age Major, Occ. Business,

(Registered General Power of Attorney
Holder for 1 to 5)

R/o C/o Near Aksa Masjid, Habib Nagar,
Teka, Nagpur

.....NON-APPLICANTS

Mr. Mr. R.G. Gour, Advocate for applicant.
Mr. P.S. Dhenge, Advocate for respondent Nos. 5 and 6.

CORAM:- RAJNISH R. VYAS, J.

Date : 10.10.2025

ORAL JUDGMENT

Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsels for the parties.

2. Original accused has preferred Criminal Revision Application before this Court challenging order passed by Special Court of Senior Citizen, Nagpur, District Judge 11 and Addl. Sessions Judge, Nagpur, in Criminal Appeal No. 106/2024, by which although sentence of the accused was suspended but he was directed to deposit 20% of the cheque amount. An application preferred by accused for dispensing with requirement of deposit of minimum 20% of the amount for suspension of sentence was also rejected.

3. It is the case of original accused that the judgment passed by the trial Court cannot be sustained in law since according to him, Power of Attorney has entered the witness box. He further contends that the appellant and respondents are real brother and sister and the transaction was not a commercial transaction and there was no legally enforceable debt. According to him, he is a labourer, who earns Rs. 300/- per day and therefore, the condition

of deposit of 20% compensation is onerous.

4. Per contra, learned counsel for complainant has contended that the judgment passed by the trial Court is just and proper and its legality is already challenged by preferring an appeal before the Sessions Court. He submits that the application preferred by the original accused for dispensing with deposit of 20% of amount fails to give any specific reason and therefore, this application may not be entertained.

5. I have perused record of the case, so also, given thoughtful consideration to the arguments advanced by the parties. The original accused is convicted for commission of offence punishable under Section 138 of Negotiable instruments Act. The trial Court while convicting the accused has taken into consideration various factors including the fact that in spite of receipt of statutory notice, accused did not reply to the same. Further accused did not enter the witness box or brought anything to the notice of the Court to disbelieve the version advanced by the complainant. It is also pertinent to mention that if the application for dispensing with requirement of deposit of 20% amount is seen, it would be crystal clear that no evidence is brought on record to show that original accused was working as a labour and is a poor person. Only because a statement is made on affidavit, it cannot be read as a gospel truth. The averments made in the application are not sufficient to

dispense with requirement of deposit of 20% of amount. The appellant/original accused has already preferred an appeal challenging his conviction before Sessions Court, where he can prove his innocence. Even otherwise, if original accused succeeds in his case, the complainant would be under legal obligation to return the amount.

In that view of the matter, I am not inclined to entertain instant application. The application is dismissed, accordingly.

(RAJNISH R. VYAS, J.)