



CNR:MHLA01-004400-2023.
Cri. Appeal No. 28/2023.
Nagnath Versus Ramesh.

ORDER BELOW EXH.4.

1. Present application has been filed on behalf of appellant/accused and thereby prayed to stay/suspend the order passed by learned J.M.F.C., AUSA in S.C.C. No.343/2014 on 19.10.2023. It is mentioned that the s[[r;;smy has preferred criminal appeal challenging the judgment and order passed by learned J.M.F.C., whereby appellant has been convicted for the offences punishable under Section 138 of N.I. Act and has been sentenced to suffer simple imprisonment till rising of court and to pay fine of Rs.2,20,000/-.

2. Say to the application on behalf of respondent /complainant is filed and mentioned that the application be rejected with direction to deposit fine amount of Rs.2,20,000/-.

3. Advocate for appellant submitted that present application has been filed to suspend the order of conviction till disposal of appeal. It is submitted that the appellant have every hope of succeeding the matter and appellant is ready to abide condition if imposed at the event of allowing application. As per Section 389 (1) of Code of Criminal Procedure, the sentence of appellant/accused be suspended till the final disposal of present appeal, appellant is only earning member of his family, on whom the responsibility lies of his family. It is further submitted that

accused/appellant will pursue the matter regularly and will not leave the limits of jurisdiction of the court.

4. Advocate for respondent/complainant submitted that the order of conviction is of dated 19.10.2023 and present application is filed on 20.11.2023. Thus, the application is not within limitation, as it ought to have filed on or before 19.11.2023. Therefore, application be rejected and appellant be directed to deposit entire amount of fine of Rs.2,20,000/-.

5. Section 389 (1) of Code of Criminal Procedure specify that pending any appeal by convicted person the appellate court may for reason to be recorded, order that the execution of sentence or order appealed against be suspended.

6. Section 148 of Negotiable Instruments Act provides that in an appeal by the drawer against conviction under Section 138, the appellate court may order appellant to deposit 20% of fine or compensation awarded by Trial Court. It further provide that said amount shall be deposited within 60 days from the date of order or within further period not exceeding 30 days. The present application is filed on 20.11.2023 and Advocate for appellant submitted argument on the same today i.e. on 09.08.2024. Hence, the period of 60 days has already been availed by appellant. Therefore, further 60 days for depositing the amount cannot be given to the appellant.

7. In view of Section 389 of Cr.P.C. and Section 148 of N.I. Act, the application Exh.4 deserves to be allowed, for

suspension of conviction awarded by learned J.M.F.C., Ausa, on condition to deposit 20% of amount of compensation within eight days from today and to furnish surety for the remaining amount. Hence, following order :-

ORDER

1. Application Exh.4 is hereby allowed.
2. The order of sentencing the appellant to suffer simple imprisonment till rising of the court is hereby suspended till disposal of appeal and order to pay compensation of Rs.2,20,000/- is suspended subject to condition that appellant shall deposit 20% of the amount of compensation of Rs.2,20,000/- within eight days from today and accused/appellant shall furnish surety for the remaining 80% of the amount of compensation.
3. Application Exh.4 is disposed off accordingly.

Date : 09.08.2024.

**(Smt. R.M. Kadam)
Additional Sessions Judge - 4,
Latur.**
