



ORDER BELOW APPLICATION (EXHIBIT 5) IN
CRIMINAL APPEAL NO. 18/2023
(DAYANAND VS. KARMAYOGI)
(PASSED ON 22/08/2023)

1. Heard, Shri. Bhadule, advocate for the appellant, at length.
2. Shri. Bhadule, advocate for the appellant submitted at Bar that no other appeal/revision in respect of the order under appeal/revision is pending before any other Court.
3. Read application.
4. Gone through the order under appeal.
5. The appellant is convicted in Summary Trial Case No. 2386/2008, he is released on bail by the court which convicted him for the offence. Thus, the appellant is already on bail.
6. After going through the contents in the application and order under appeal it is clear that the appellant has preferred this appeal against the conviction under Section 138 of the Negotiable Instruments Act (for short 'N. I. Act'). The appellant is not convicted of an offence punishable with death or imprisonment for life or imprisonment for term of not less 10 years.
7. It transpires from the order under appeal that the respondent has succeeded in proving case against the appellant. This finding is based on the material produced by the respondent that too after leading evidence.
8. However, the guilt of the appellant is required to be re-

judged and pending such adjudication if the appellant has served out the sentence or a substantiate part of it, in the event of his ultimate acquittal, the suffering may become irreversible. Therefore, the application deserves to be granted, at this stage.

9. Moreover, whether the order under appeal is proper or legal or not is required to be considered on merits at the time of final hearing of this appeal.

10. After carefully considering all the relevant aspects, the appellant being on bail has been sentenced to imprisonment not exceeding three years. In my opinion, this is sufficient reason to grant this application and there are no exceptional reasons existing which requires the rejection of the same, at this stage.

11. After going through the order under appeal it transpires, that the appellant is directed to pay compensation amounting to Rs. 1,05,000/-. In my opinion, if order of payment of compensation is allowed to remain as it is, the legal rights of the appellant will be prejudiced and he will suffer substantial loss. Under these facts and circumstances the court's interference is necessary to protect the appellant's legal rights.

12. Considering my findings, it appears that the object of suspending sentence would be defeated by delay if the sentence is not suspended, in the first instance. Therefore, in order to avoid multiplicity of the proceeding I am of view that if the sentence is suspended, no harm or injustice will be caused to the respondent. The appellant has prima-facie satisfied me on this point that there is sufficient reason to suspend the sentence.

13. The appellant has not deposited any amount out of the

compensation amount. Therefore, in view of Section 148 inserted in the N. I. Act by Amendment Act 20 of 2018 which came into effect from 01/09/2018, before suspending the sentence if the appellant is directed to deposit 20% of the amount of the compensation within 60 days from the date of this order, it will serve the interest of justice. The deposit of this amount by the appellant shall be without prejudice to the rights and contentions of the parties in the appeal. The deposit of the compensation amount as ordered shall be condition precedent.

14. Further, I am of the considered view that the execution of the sentence and order under appeal is required to be suspended and the appellant is required to be released on bail on his furnishing a personal bond in the sum of Rs. 50,000/- with one surety in the like amount. Therefore, in the interest of justice, I am inclined to grant this application.

15. I leave open the contentions of the parties on the merits of the appeal.

16. In the result, the order.

ORDER

1)	The application (Exhibit 05) is granted.
2)	The execution of the sentence and order dated 25/07/2023 passed by the Judicial Magistrate, First Class, Pandharpur (Court No. 2) in Summary Trial Case No. 2386/2008 is suspended for 60 (Sixty) days from the date of this order.
3)	The appellant is directed to deposit 20% (Twenty Percent) of the amount of the compensation within 60 (Sixty) days from the date of this order, failing which necessary order shall follow in accordance with law.

4)	The appellant be released on bail on his furnishing a personal bond in the sum of Rs. 50,000/- with one surety in the like amount.
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(Pronounced in Open Court)

Date- 22/08/2023

(M. B. Lambe),
Additional Sessions Judge,
Pandharpur.

C E R T I F I C A T E

I affirm that the contents of this PDF file Order is same word to word as per the original Order.

- (a) Name of the Stenographer : Sou. M. M. Kulkarni
- (b) Court : M. B. Lambe, District
Judge – 1 & Addl.
Sessions Judge, Pandharpur.
- (c) Order signed by P.O. on : 22/08/2023
- (d) Order uploaded on : 23/08/2023