

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL REVISION APPLICATION NO.252 OF 2023  
WITH  
INTERIM APPLICATION NO.2926 OF 2023  
IN  
CRIMINAL REVISION APPLICATION NO.252 OF 2023**

M/s. Sai Caterers & Anr ...Applicants

Versus

Ramnath Jagannath & Company & Anr ...Respondents

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Mr. Yashpal Thakur, i/b Shubankar Avhad, Advocate, for  
Applicants.

Mr. Arfan Sait, APP, for State/Respondent.  
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**CORAM : SARANG V. KOTWAL, J.**

**DATE : 18<sup>th</sup> AUGUST 2023**

**PC :**

1. The Applicants are the original Accused in Criminal Summary Case No.1315 of 2016 before the Judicial Magistrate First Class, Nashik road, Nashik. The learned trial Judge vide his judgment and order dated 19<sup>th</sup> March 2021 convicted the Accused under Section 138 of the Negotiable Instruments Act, 1881 (for short "N.I. Act"). The Applicant No.2 was sentenced to suffer simple imprisonment for three months and to pay compensation of

Rs.24,44,587/- and in default to suffer simple imprisonment for a period of two months. The said amount was directed to be paid to the Complainant (who is the Respondent No.2 herein) by way of compensation.

2. The Applicants challenged the said order vide Criminal Appeal No.28 of 2021 before the Court of Sessions at Nashik road, Nashik. The learned Additional Sessions Judge, Nashik vide his judgment and order dated 24<sup>th</sup> July 2023, modified the order of the trial Court and instead of sentencing the Applicant No.2 for simple imprisonment for three months, he was sentenced to suffer simple imprisonment till rising of the Court. The rest of the sentence was maintained.

3. The prosecution case is that the Complainant supplied grocery articles to the Applicant's firm. They purchased the articles on credit of more than Rs.45 lakhs. Some part payment was made and an amount of Rs.17,58,697 remained to be paid. The Applicants issued the cheque drawn on HDFC Bank, Sinnar branch, Nashik for that amount. The cheque was dishonoured on

presentation and after following due procedure, the complaint was filed.

4. During the trial, the Complainant was examined as CW-1 and the brother of the Applicant No.2 was examined as the defence witness. The learned trial Judge as well as the learned Appellate Judge referred to the presumptions under the N.I. Act. The defence of the Applicants that the Complainant had supplied articles of low standard, was not accepted and ultimately the Applicants were convicted.

5. Learned Counsel for the Applicants submitted that both the Courts erred in rejecting the defence of the Applicants. The defence witness had given sufficiently strong evidence showing that there was no liability in existence as substandard articles were supplied. Without prejudice to his contentions on merits of the matter, learned Counsel for the Applicants on instructions states that the Applicants are willing to deposit an amount of Rs.15 lakhs in the trial Court. He submitted that during the pendency of the Appeal, the Applicants have already deposited Rs.2,95,000/- in the

Sessions Court. He submitted that the amount of Rs.15 lakhs would be deposited over and above the amount which is already deposited. He further submitted that the Applicants have no objection if the said amount is withdrawn by the Respondent No.2 during pendency of the Revision Application, subject to the outcome of the Revision Application. The submission made by the learned Counsel for the Applicants is quite reasonable. Therefore, I am inclined to suspend the sentence imposed on the Applicants till the next date.

6. Hence, the following order:

O R D E R

- i) Issue notice to the Respondents, returnable on 1<sup>st</sup> November 2023.
- ii) Till that date, the sentence imposed on the Applicants is suspended by way of ad-interim relief.
- iii) It is made clear that the sentence is suspended on

the basis of the statement made before this Court today. The Applicants are permitted to deposit Rs.15 lakhs before the trial Court. The said amount shall be deposited in the trial Court within a period of six weeks from today.

iv) Stand over to 1<sup>st</sup> November 2023.

**(SARANG V. KOTWAL, J.)**