

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

**INTERIM APPLICATION NO.3038 OF 2024
IN
CRIMINAL REVISION APPLICATION NO.401 OF 2024
WITH
INTERIM APPLICATION NO.3039 OF 2024
IN
CRIMINAL REVISION APPLICATION NO.402 OF 2024**

Prafulla Shankarrao Ahire

Age : 45 Years, Occupation : Business,
Residing at : Plot No.10, Jayram
Tejoprabha Colony, Nashik.

**...Applicant
(Original Accused)**

Versus

1. **Digaram Motiram Jadhav**

Age : 65 Years, Occupation : Household,
Residing at : Aai Niwas, Sangmeshwar,
Sawata Chowk, Taluka : Malegaon,
District : Nashik – 423 014.

**...Respondent No.1
(Original Complainant)**

2. **State of Maharashtra**

...Respondent No.2

Mr.Priyal Sarda a/w Mr.A.R. Kapadnis, Mr.Rahul Totala i/b. Ms.Akshata Shah:-	Advocates for Applicant.
Mr.Suresh M. Sabrad a/w Mr.Nilesh Bafana, Mr.Pratik Ingale, Mr.Pratik Sabrad, Mr.Sarvesh Deshpande, Ms.Neha Zanje:-	Advocates for Respondent No.1 (Original Complainant).
Ms.Sangita E. Phad:-	APP for Respondent No.2-State in Interim Application No.3038 of 2024.

Mr.H.J.Dedhia:-	APP for Respondent No.2-State in Interim Application No.3039 of 2024.
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CORAM : S. M. MODAK, J.

DATE : 6th AUGUST 2024

P. C. :-

1. Heard learned Advocate Shri.Sarda for the Applicant – convicted Accused and learned Advocate Shri.Sabrad for the original Complainant – Respondent No.1.
2. The Accused issued two (2) cheques towards the liability arising out of the transaction of purchase and sale of land along with the business of spinning mill. They are, for **Rs.40,00,000/-** (Rupees Forty Lakh Only) and **Rs.35,00,000/-** (Rupees Thirty Five Lakh Only) each. In respect of that transaction, there were two (2) documents. One is, sale-deed and another is, the **Memorandum of Understanding**¹. The said **MoU** is dated **21st March 2013**. Both these documents were executed in favour of Sustain Cross Sciences Private Limited of which, the present Applicant is the Director. Whereas, the sale-deed is dated **4th August 2012**. It is also registered. The consideration mentioned in the sale-deed is **Rs.1,10,00,000/-** (Rupees One Crore Ten Lakh Only).

¹ Henceforth, “the MoU”

The entire consideration is paid and possession of the property was also handed over to the Company.

3. Whereas, the consideration mentioned in the MoU is **Rs.2,25,00,000/-** (Rupees Two Crore Twenty Five Lakh Only). Out of that amount, **Rs.1,50,00,000/-** (Rupees One Crore Fifty Lakh Only) is paid and **Rs.75,00,000/-** (Rupees Seventy Five Lakh Only) is yet to be paid. (This is the consideration mentioned as per the MoU) and the Complainant has agreed to obtain **No Objection Certificate²** from the Sales Tax Department. The cheque of **Rs.75,00,000/-** (Rupees Seventy Five Lakh Only) was issued on behalf of the Company by way of security. The Company has agreed to pay the amount in cash and then, the Complainant has agreed to return the cheque.

4. Subsequently, in place of this cheque, **two cheques** for **Rs.40,00,000/-** (Rupees Forty Lakh Only) and **Rs.35,00,000/-** (Rupees Thirty Five Lakh Only) were issued by the Applicant in his individual capacity. They got dishonoured.

5. The Complainant contends that he has obtained the NOC and it is also handed over to the Applicant. Whereas, the Applicant disputes this contention. There were two complaints filed. The Complainant

² NOC, henceforth.

examined **four (4) witnesses** including the witnesses from the Sales Tax Department about issuance of the NOC. Whereas, the Accused has also entered into the witness-box. His defence is, that of denial of liability due to non-compliance of the condition to obtain the NOC. This condition is clause No.4 of the MoU. The trial Court does not find favour with the Applicant and he was convicted by the Court of Additional Chief Judicial Magistrate – Malegaon as per two separate judgments dated 17th October 2022. The sentence is as follows:-

- (a) Two (2) years simple imprisonment³
- (b) Double the amount of cheque i.e. **Rs.80,00,000/-** (Rupees Eighty Lakh Only) and **Rs.70,00,000/-** (Rupees Seventy Lakh Only) being an amount of fine and interest at the rate of 9% per annum⁴.

6. Against the order of trial Magistrate, the Accused preferred two Appeals being Criminal Appeal No.34 of 2022 and Criminal Appeal No.35 of 2022. He partly succeeded. The direction to pay interest was set aside.⁵ He was taken into custody immediately⁶.

7. There are contentions and rival contentions as to whether, the condition to obtain the NOC as per the MoU is fulfilled or not.

3 In every case viz., S.C.C.No.990 of 2015 and S.C.C.No.991 of 2015.

4 In each case referred above.

5 Vide two separate judgments dated 29th July 2024

6 Vide Clause (3) of operative order dated 29th July 2024

Furthermore, there are rival contentions about the liability, whether it has arisen and whether, it is committed to obtain the NOC. These issues can be decided when the Revision Applications will be argued at the time of Admission.

8. However, learned Advocate Mr.Sarda for Applicant prayed that the substantive sentence be suspended. According to him, the amount of **Rs.30,00,000/-** (Rupees Thirty Lakh Only) is already deposited before the Appellate Court⁷ and he has got instructions to submit about deposit of **Rs.7,50,000/-** (Rupees Seven Lakh Fifty Thousand Only). So, in total, it will come to 50% of the principal amount of cheque. It comes to **Rs.75,00,000/-** (Rupees Seventy Five Lakh Only).

9. Whereas, according to learned Advocate Shri.Sabrad for the Complainant–Respondent No.1, the Applicant has failed in both the Courts below and he be directed to deposit the entire amount of compensation. According to him, the percentage of deposit is not on the basis of amount of cheque but amount of fine or compensation. He is right.⁸

10. I think, the Applicant can be asked to deposit 20% more. It is true that condition to deposit compensation is an optional and it is

⁷ Additional Sessions Judge - Malegaon

⁸ Vide Section 148(1) of N.I.Act, 1881

discretionary. But for waiving that condition, a case has to be made out.

I do not find, condition can be waived. In view of that, following order is passed:-

ORDER

(I) Both the substantive sentences of imprisonment of two (2) years and the direction to pay fine respectively awarded vide two separate judgments dated 17th October 2022 passed in S.C.C.No.990 of 2015 and S.C.C.No.991 of 2015 by the Court of Additional Chief Magistrate – Malegaon and confirmed by the Court of Additional Sessions Judge – Malegaon in Criminal Appeal No.34 of 2022 and Criminal Appeal No.35 of 2022 are suspended on following conditions:-

- (i) The Applicant - **Prafulla Shankarrao Ahire** to furnish surety and personal bond of **Rs.15,000/-** (Rupees Fifteen Thousand Only) in each case⁹ within a period of two (2) weeks from today.
- (ii) The Applicant - **Prafulla Shankarrao Ahire** to deposit **Rs.24,00,000/-** (Rupees Twenty Four Lakh Only) in following manner:-
 - (a) **An amount of Rs.7,50,000/-** (Rupees Seven Lakh Fifty Thousand Only) within a period of one (1) week before the trial Court.
 - (b) **Applicant to deposit Rs.16,50,000/-** (Rupees Sixteen

⁹ S.C.C.No.990 of 2015 and S.C.C.No.991 of 2015.

Lakh Fifty Thousand Only) **within a period of eight (8) weeks from today before the trial Court.**

- (c) The Applicant - Prafulla Shankarrao Ahire be released from jail once he will furnish the surety.
- (II) The Respondent No.1 – Complainant is at liberty to withdraw the amount from the trial Court on furnishing an undertaking that he will refund the amount along with interest when directed by this Court.
- (III) This is without prejudice to the rights of the Applicant-Accused.
11. In view of the above, **both Interim Applications are disposed of.**
12. Parties to act on an authenticated copy of this order.
13. Stand over to **1st October 2024.**

[S. M. MODAK, J.]