

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

CRIMINAL APPLICATION NO. 130 OF 2015

Shashank A. Jain

... Applicant.

V/s.

State of Maharashtra & others.

... Respondents.

Mr. Rahul R. Singh for the Applicant.

Mrs. A. A. Mane, APP for the State.

CORAM : M.L.TAHALIYANI,J.

DATE : 25th FEBRUARY, 2015

P.C. :

1 The applicant is a complainant in Crime no. 42 of 2011, registered with Crime Branch, Commissioner Officer, Mumbai, which was earlier registered as Crime No.87 of 2011 with D.B. Marg Police Station. Respondent Nos. 2 and 3 were named as accused in the said FIR and it was alleged that they had committed criminal breach of trust in respect of diamonds worth of Rs.22,86,101/-. They were arrested and the investigation was carried out by the Crime Branch. After completion of the investigation, chargesheet was submitted in the court of Metropolitan Magistrate, 37th Court, Mumbai vide case no.443/PW/2011.

2 During the pendency of the said case, the dispute between the complainant and the accused came to be resolved amicably and an application for compounding the offence was made. Permission was sought from the learned Magistrate to compound the offence. The permission was granted by the learned Magistrate and the offence stood compounded.

3 The applicant is aggrieved by the order of the learned Magistrate, directing the refund of Rs.9,93,284 to the accused/ respondent nos. 2 and 3. This amount was deposited by the accused in the court as a condition of the bail granted by this court. The learned Magistrate failed to note that the compounding application itself states that on compounding of the offence the amount shall be returned to the applicant. Prayer clause - 6(a) of the said application can be reproduced as under :

“6(a) That the abovenamed accused seeking direction from this Hon'ble Court to pass the order to release the amount of Rs.9,93,284/- (Rupees Nine Lakh Ninety Three Thousand Two Hundred Eighty Four only) with due interest deposited in the SBI Branch till date to the Complainant Shri Shashank Jain henceforth against the compromise in the said matter.”

4 Respondent nos. 2 and 3 have chosen to remain absent though they are served. Therefore, it appears that they

have nothing to say in the matter. It is possible that they did not want to appear because they have already given consent for the refund of the amount.

5 In view of what has been stated by me hereinabove, I pass following order :

- i. The order passed by the learned Magistrate, directing refund of the amount to the accused is set aside.
- ii. The amount of Rs. 9,93,284/- alongwith the interest, if any, shall be paid to the Applicant forthwith.

6 The application stands disposed of in the above terms.

(JUDGE)

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