

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.32 OF 2016
IN
CRIMINAL REVISION APPLICATION NO.418 OF 2015**

Geeta Marine Services Pvt. Ltd. &
Anr.

...Applicants

Versus

The State of Maharashtra & Anr.

...Respondents

.....

Mr. Saeed Akhtar with Mr. Hitesh Thorat for the Applicants.

Mr. Dinesh Chandra Maingi, Respondent No.2, in-person present.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : 23rd March, 2016.

P. C. :

The Applicants herein have been convicted for the offence punishable under section 138 of the Negotiable Instruments Act. The appeal filed by the Applicants was dismissed, which led to filing of revision application No.418 of 2015. During the pendency of the said application the Applicant No.2 had sought suspension of execution of sentence and enlargement on bail.

2. The Applicants had undertaken to deposit sum of Rs.30 lakhs before the Sessions Court, Greater Bombay in three equal installments of Rs.10 lakhs each within a period of three months from the date of the order and had further undertaken to furnish copy of the

receipt to Respondent No.2 within seven days from the date of deposit of the amount. In view of the said statement, the substantive sentence was stayed till the disposal of the revision application subject to condition that the Applicant No.2 furnish bail bond of Rs. 15,000/- with one surety in equal amount to the satisfaction of the Sessions Court within a period of 15 days.

3. The learned counsel for the Applicants submits that said order was challenged before the Apex Court in Special Leave to Appeal No.10690-10691/2015. By order dated 4.1.2016 the Applicants were permitted to withdraw the said petition with liberty to move this court for relief sought. In the event of filing such application, this Court was directed to consider the request of the Petitioner.

4. Pursuant to the said order dated 4.1.2016, the Applicants have filed this application for recall and /or modify the condition of deposit of money as stipulated vide order dated 26.10.2015.

5. The Respondent No.2 has filed his affidavit opposing the said application. The Respondent No.2 has stated that the Applicant has not brought on record any new facts or circumstances instituting modifying the said order. The Respondent No.2 has stated that cheque issued by the Applicant No.2 was dishonoured and that the Applicant

No.2 has been held guilty of the offence under section 138 of the Negotiable Instruments Act and sentenced to undergo imprisonment of three months and to pay compensation of Rs.95,30,000/- i.d. one month's simple imprisonment. The appeal filed against the said conviction has been dismissed. The Respondent No.2 has stated that the Applicant No.2 at his own had given undertaking in the open Court to deposit Rs.30 lakhs in three equal monthly installments and had thus obtained order of bail and suspension of execution of sentence. The Respondent No.2 has further stated that the Applicant No.2 own several commercial and residential properties in Mumbai, value of which is more than 12 cores and that he is financially sound living a lavish life style and that he is capable to deposit the amount but is not willing to pay the same.

6. Heard the learned counsel for the Applicants and the Respondent No.2, who is present in person. The records reveal that the Applicants had issued a cheque for Rs.95,26,693/- which was dishonoured. They were prosecuted for the offence under section 138 of the Negotiable Instruments Act. As stated earlier the Applicants have been convicted for the offence under section 138 of the Negotiable Instruments Act for dishonour of cheque. The appeal filed against the conviction has been dismissed and this had led to filing of

this revision wherein the prayer for bail and suspension of execution of sentence was made. In view of statement made by the Applicants, execution of sentence was suspended. It is seen that though the Applicants had undertaken to deposit the amount of Rs.30 lakhs within a period of three months, in three equal installments of Rs.10 lakhs each, till date the Applicants have not deposited any amount before the Sessions Court as undertaken.

7. The Applicants have sought modification of the order mainly on the ground that :-

(i) He is unable to deposit any amount as the company was wound up on 19.3.2009.

(ii) He has already deposited Rs.19,06,000/- before the Sessions Court and that he is facing various litigations instituted by the complainant which amounts to persecution.

(iii) He had not expressed his willingness to deposit Rs.30,00,000/-.

8. It is to be noted that grounds stated in para 7(i) and 7(ii) were already existing as on the date the Applicant had given an undertaking to deposit the amount. The contention that the Applicant has not expressed his willingness to deposit an amount of Rs.30 lakhs is apparently a false statement. It is also pertinent to note that having

obtained a favourable order after giving such an undertaking, the Applicant has not deposited any amount before the Sessions Court. This itself shows that the application lacks bonafides.

9. In view of the above, I do not find any reason to reduce the amount. However, in the interest of justice time to deposit the money is extended by six weeks from the date of receipt of this order. The Applicants are directed to deposit the amount of Rs. 30,00,000/- before the Sessions Court in three equal installments of Rs.10 lakhs each in Demand Draft within a period of six weeks from the date of receipt of this order, failing which the order of bail shall stand vacated. The Applicants shall furnish to the Respondent No.2 the copy of receipt of the deposit. The learned Sessions Judge shall invest the amount so deposited in any nationalised Bank.

10. The application stands disposed of.

(ANUJA PRABHUDESSAI, J.)