

FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.394 OF 2016

Mr.Ramniklal D.Shah.

...Applicant.

vs.

State of Maharashtra and ors.

...Respondents.

Smt.Mallika Ingle for the Applicant.

Mr. A.S.Patil, APP. for the State.

CORAM : A.S.GADKARI, J.

DATE : 17th June, 2016

P.C.

By the present application under Section 482 of the Code of Criminal Procedure the applicant has impugned the order dated 22.3.2016 passed below Exh.18 thereby vacating the order of stay dated 11.2.2015 granted in favour of the applicant.

2) Heard the learned counsel for the applicant and respondent No.2 in person and also perused the record annexed to the application.

3) The applicant is convicted under Section-138 of the Negotiable Instruments Act and has been sentenced to suffer simple imprisonment for one month by the learned Judicial Magistrate First Class, Dahanu in S.C.C. No.1067/2011 by its Judgment and order dated 5.2.2015. By the same Judgment and Order the Applicant has been directed to pay compensation of Rs.1,60,000/- to Respondent No.2 within one month from the date of passing of the said order and in default to further suffer simple imprisonment of two months.

The applicant has preferred the Criminal Appeal No.7/2015 against the said Judgment and Order of conviction and sentence in the Court of Additional Sessions Judge, Palghar. The applicant also filed an application below Exh.4 for suspension of sentence of imprisonment and for releasing him on bail. By an order dated 11.2.2015 the learned Additional Sessions Judge suspended the substantive sentence imposed upon the applicant and directed him to be released on bail on certain conditions. By the said order dated 11.2.2015 it was also directed that the order of compensation will be passed after hearing the respondent/complainant.

4) By an order dated 22.6.2015, the learned Additional Sessions Judge, Palghar further directed the applicant to deposit a sum of Rs.80,000/- in Criminal Appeal No.7/2015 within a period of one month from the date of passing of the said order. As the applicant failed to deposit the said amount within the stipulated period, the respondent No.2 filed an application below Exh.18 for vacating the stay order granted by an earlier order dated 11.2.2015. The learned Additional Sessions Judge, Palghar by the impugned order dated 22.3.2016 below Exh. 18 was pleased to allow the said application filed below Exh.18 and vacated the stay granted in favour of the applicant by an order dated 11.2.2015. The said order is impugned herein as stated above.

5) The learned counsel appearing for the applicant submitted that the order dated 11.2.2015 was an independent order suspending the substantive sentence imposed upon the applicant and as the substantive sentence was suspended, consequently the order for releasing the applicant on bail was passed. She further

submitted that once the sentence is suspended the Appellate Court was not justified or right in subsequently directing the applicant to deposit part of amount of compensation in the registry of the Appellate Court. She further on instructions submitted that respondent No.2 has filed various applications before all the judicial forums and is making baseless allegations against the Judicial Officers which has persuaded the learned Appellate Court for vacating the stay. The respondent No.2 has also published certain statements against the interest of her client on the inter net and social media and that is also the cause for vacating the stay by order dated 22.3.2016 granted by an order dated 11.2.2015 which is impugned in this application. During the course of arguments, the learned counsel further taking instructions from the applicant, who is present in Court submitted that, the applicant will deposit the said amount of Rs.80,000/- in Appellate Court within a period of one week from the date of receipt of this order and the impugned order dated 22.3.2016 may therefore be set aside. She submitted that she has good case on merits in appeal. She further submitted that the original complaint was filed in the year 2011 and the appeal may be expedited in the interest of justice.

The respondent No. 2 i.e. original complainant (in S.C.C. NO.1067/2011) who appeared in person, submitted that the Trial Court has directed the applicant to pay the compensation of Rs.1,60,000/- by its Judgment and Order dated 5.2.2015 and the same has not been deposited by the applicant till date. She further submitted that the order dated 22.6.2015 directing the applicant to deposit a sum of Rs.80,000/- before the Appellate Court was just

and proper order and as the applicant has failed to deposit the said amount within stipulated period, she was constrained to file the said application below Exh.18. She submitted that the present application may be dismissed.

6) It is a fact on record that the applicant has been convicted by the learned J.M.F.C. Dahanu under Section 138 of the Negotiable Instruments Act in S.C.C. 1067/2011 and directed to pay the compensation of Rs.1,60,000/- to the complainant and an appeal therefrom is pending for final adjudication. That, prima facie, I am of the considered view that the order dated 22.6.2015 passed by the learned Additional Sessions, Judge, Palghar below Exh.4, directing the applicant to deposit a sum of Rs.80,000/- pending appeal was just, right and proper. The learned Appellate Court during the pendency of the appeal while suspending the sentence imposed upon the applicant has exercised its discretion with judicious mind and according to me there is no need to interfere with the said order at this stage.

As far as impugned order dated 22.3.2016 passed below Exh.18 is concerned, in view of the submission made by the applicant as recorded in Para 3 above, the same is hereby quashed and set aside subject to condition that the applicant shall deposit the said amount of Rs.80,000/- in the registry of the Appellate Court within a period of one week from the date of receipt of the present order. The deposit of amount of Rs.80,000/- in the registry of the Appellate Court shall be the condition precedent for setting aside the order dated 22.3.2016. It is needless to mention that if the Applicant fails to deposit the said amount of Rs.80,000/- within stipulated

period, the order dated 22.3.2016 shall come into effect.

The learned Additional Sessions Judge, Palghar is hereby directed to expedite the hearing of Criminal Appeal No.7/2015 and to make an endeavour to dispose it off on or before 31.12.2016.

The application is allowed in the aforesaid terms.

(A.S. GADKARI, J.)