

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1878 OF 2017

Firoz Khan Bismillah Khan

Applicant

versus

M.A.Waseem

Respondent

MR.Ajit D. Kasliwal for applicant.

None present for respondent, though served.

CORAM : PRAKASH D. NAIK, J.

DATE : 8th November 2017

PC :

1. The applicant has challenged the order dated 18th March 2017 passed by learned District Judge-VII and Additional Sessions Judge, Aurangabad in Criminal Appeal No.193 of 2016.

2. This Court vide order dated 2nd May 2017 issued notice to the respondent for final disposal. The office note indicates that the notice has been served upon the respondent. However, the respondent is not present before the Court. The application is pending in this Court since long, however, on the earlier occasions also, the respondent did not appear before this Court. Hence, I proceeded to hear the learned advocate for applicant for final disposal of this application.

3. The applicant is the original complainant who had filed a complaint for offence under Section 138 of Negotiable Instruments Act. The cheque amount involved in the proceedings is Rs.2,14,000/-. The respondent was convicted by the Court of Judicial Magistrate, First

Class, Court No.9, Aurangabad vide judgment and order dated 18th November 2016. The respondent-accused was sentenced to suffer rigorous imprisonment for one year and was also directed to pay compensation of Rs.2,50,000/- to the complainant within a period of two months from the date of said order. The respondent-accused challenged the order of conviction by preferring an appeal before the Court of Sessions. The said appeal was numbered as Appeal No.193 of 2016. The respondent-accused also preferred an application for suspension of the sentence imposed by the Trial Court. Learned Sessions Judge vide order dated 5th January 2017 suspended the sentence of imprisonment, on a condition that the accused shall execute a bond in the sum of Rs.15,000/- and shall also deposit Rs.1,00,000/- out of the compensation amount. The respondent-accused did not comply with the order of depositing the compensation amount. However, an application was preferred before the Appellate Court on 5th January 2017 seeking time to deposit the compensation amount as directed by the Appellate Court. The Sessions Court vide order dated 5th January 2017 granted time till 20th January 2017 to deposit the compensation amount of Rs.1,00,000/- as stipulated in its earlier order. Even thereafter the respondent-accused did not comply the order of depositing the compensation amount. In stead of that, an application was preferred on 20th January 2017 vide Exhibit-11 wherein it was prayed that the order passed by the Sessions Court in respect to the depositing the amount of compensation, be modified up to the minimum amount for suspension of sentence. The Appellate Court vide order dated 18th March 2017 allowed the application preferred by the respondent-accused and modified the order passed by the said Court earlier. The Sessions Court permitted the respondent-accused to deposit the amount of Rs.25,000/- as part of compensation during pendency of his appeal before the Sessions Court.

4. In the aforesaid circumstances, the applicant has approached this Court challenging the order dated 18th March 2017. It is submitted that there was no reason for the Appellate Court to recall his own order and modify and permit the respondent-accused to deposit Rs.25,000/-. The Sessions Court had suspended the sentence earlier on a condition that the accused shall deposit Rs.1,00,000/- during pendency of the appeal. It is submitted that the Sessions Court has committed an error by passing the impugned order. The Sessions Court had no power to review his own order which was passed earlier. It was open to the accused to challenge the said order by preferring appropriate proceedings before the higher Court and, therefore, the Sessions Court ought not to have entertained the application for modification of earlier order.

5. I have considered the submissions advanced by learned advocate for applicant. I have also perused the documents annexed to the application including the orders passed by the Sessions Court. It would be relevant to note that the cheque amount involved in the proceedings is Rs.2,14,000/-. The respondent-accused is convicted for the offence under Section 138 of the Negotiable Instruments Act and the Trial Court had directed the accused to pay the compensation of Rs.2,50,000/-. The Appellate Court had admitted the appeal and suspended the sentence on a condition that the accused shall deposit Rs.1,00,000/- within the stipulated time. The accused initially sought extension of time to deposit the said amount. He did not comply with the said order of depositing the compensation amount. In stead of that, an application was preferred for modification of the earlier order passed by the Sessions Judge. In the circumstances stated hereinabove, the Sessions Court ought not to have recalled its earlier order directing the accused to deposit compensation amount of Rs.1,00,000/-. There are no cogent

reasons to modify the earlier order except stating that the order of depositing the compensation should be reasonable. It is pertinent to note that the accused has failed to comply the order passed by Sessions Court directing him to deposit the compensation of Rs.1,00,000/- and initially sought time to deposit the same and thereafter sought modification of the order. I am of the opinion that the Sessions Court ought not to have modified the earlier order. In the facts and circumstances, there was no reason to reduce the amount of Rs.1,00,000/- as directed earlier, to Rs.25,000/- as directed by the Sessions Court in the impugned order. In the circumstances, the order passed by the Sessions Court is required to be set aside.

6. Hence, I pass following order :

ORDER

- (a) Criminal Application No.1878 of 2017 is allowed;
- (b) The order dated 18th March 2017 passed by District Judge-VII and Additional Sessions Judge, Aurangabad below Exhibit-11 in Criminal Appeal No.193 of 2016 directing the respondent to deposit Rs.25,000/- as compensation amount, is quashed and set aside and the respondent is directed to comply the order dated 5th January 2017 within a period of three weeks from today;
- (c) The application is disposed of.

(PRAKASH D. NAIK, J.)

MST