

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.414 OF 2016
IN
CRIMINAL REVISION APPLICATION NO.419 OF 2016

M/S.DUJODWALA PAPER CHEMICALS LTD.)
AND ORS.)...APPLICANTS

V/s.

THE STATE OF MAHARASHTRA & ANR.)...RESPONDENTS

Ms.Anandini Fernandez, Advocate for the Applicants.

Mr.PH.Gaikwad-Patil, APP for the Respondent – State.

Mr.Yashpal Thakur i/b. PKA Associates, Advocate for Respondent No.2.

CORAM : A. M. BADAR, J.

DATE : 23rd JANUARY 2017.

P.C. :

1 This is an application for suspension of sentence and releasing applicants / accused on bail during pendency of the revision application.

2 Facts necessary for deciding the present application are thus :-

Respondent no.2 Amit Shah lodged a complaint alleging the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, against present applicants that three cheques issued by present applicants / accused in discharge of legally recoverable debt amounting to Rs.14,84,490/-, came to be dishonoured and despite receipt of statutory notice, applicants / original accused failed to repay the amount under the cheque. On 1st December 2014, the learned trial court held applicants / accused guilty of the offence punishable under Section 138 of the Negotiable Instruments Act. Applicant no.1 being a company was directed to pay fine of Rs.3,000/- whereas applicants / accused nos.2 and 3 were sentenced to suffer simple imprisonment for a period of 2 months. Applicants / accused persons were directed to pay compensation of Rs.14,84,490/- to respondent no.2 / original complainant within a period of one month.

3 Being dissatisfied with the judgment and order of conviction and sentence, present applicants / original accused preferred Criminal Appeal bearing No.1125 of 2014. Similarly, respondent no.2 / original complainant also challenged the judgment and order of the trial court because of insufficiency of sentence and prayed for enhancement of sentence. That Criminal Revision Application bearing No.1581 of 2014 along with Criminal Appeal No.1125 of 2014 were heard and decided by a common order dated 5th July 2016. The criminal appeal filed by present applicants was dismissed and the revision application filed by respondent no.2 / original complainant came to be allowed partly. Applicants / accused nos.2 and 3 were directed to pay an amount of Rs.14,84,490/- with simple interest over the same at the rate of 9 percent per annum from the date of filing of the complaint till recovery of the entire claim amount, by the appellate / revision court on 5th July 2016.

4 I have heard the learned advocate appearing for applicants / original accused. She argued that after conclusion of the trial, applicants / accused came to know that amount under the cheque were duly paid to respondent no.2 / original complainant. However, in submission of the learned advocate appearing for applicants / original accused, the appellate court has recorded incorrect finding on this aspect instead of remanding back the matter to the trial court.

5 I have also heard the learned advocate appearing for respondent no.2 / original complainant. He submitted that the balance amount is Rs.10,13,290/- instead of Rs.9,00,000/- recorded in the order dated 19th July 2016 and the same may be directed to be paid by applicants / original accused in order to avail liberty as both the courts below have given concurrent finding of fact regarding legally enforceable debt and dishonour of cheque.

6 Applicants / original accused are exercising revisional jurisdiction of this court. It will have to be pointed out that impugned order suffers from glaring error of law or defects in procedure. What is sought to be argued before this court is refund of the amount under the cheque which allegedly came to the notice of present applicants / original accused after completion of the trial. This aspect was firstly urged before the appellate court and in paragraph 16 the learned appellate court has recorded the observations that applicants / original accused have not filed connected documents to support the contention that the amount under the cheque was already paid to the original complainant.

7 Be that as it may, if applicants were having necessary evidence to show that they had repaid the entire amount under three cheques payable to the original complainant, then it was incumbent on their part to take recourse to the procedure prescribed by the Code of Criminal Procedure for bringing this fact before the proper forum by moving proper application. This does not appear to have been done and therefore, mere contention that

applicants have paid the amount under the cheque, cannot be given any weightage when such evidence was not the part of the proceedings before the trial court and even before the appellate court. Recourse to the necessary provision of the Code of Criminal Procedure was not made in order to establish this fact.

8 In this view of the matter, as cheque amount was Rs.14,84,490/- and the balance amount as on day is Rs.10,13,290/-, interest of justice would be served if applicants / original accused are enlarged on bail provided they deposit the entire balance amount of cheque within a period of two weeks from today. In this view of the matter, the following order :

- i) Criminal Application No.414 of 2016 for suspension of sentence and releasing applicants / accused on bail during pendency of the revision application is allowed subject to condition that applicants / accused should deposit balance amount of Rs.10,13,290/- before the learned trial court within a period of two weeks from today, failing which, this order shall stand cancelled automatically without reference to the court.

ii) Subject to deposit of balance amount of Rs.10,13,290/-, applicants / accused are directed to be released on bail on executing P.R.Bond in the sum of Rs.15,000/- and on furnishing surety in like amount by each of them, during the pendency of the revision application.

(A. M. BADAR, J.)