

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

**CRIMINAL APPLICATION NO.143 OF 2017
IN
CRIMINAL REVISION APPLICATION NO.222 OF 2015**

P.A. Vijayapalan

.. Applicant

Vs.

Pramod Kumar Palhan & Anr.

.. Respondents

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Mr.M.S. Prasad, Advocate for the Applicant.
Ms.V.S. Mhaispurkar, APP for the Respondent - State.
Mr.Rustom Pardiwalla i/b. Manoj B. Nair, Advocate for
Respondent No.1.

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CORAM : PRAKASH D. NAIK, J.

DATED : FEBRUARY 9, 2018.

P.C. :

This is an application for withdrawal of the amount deposited by the revision applicant towards the compensation awarded by the trial Court. The applicant is the original complainant. The complaint was filed for the offence punishable under Section 138 of the Negotiable Instruments Act. The revision applicant was convicted by the Court of learned Metropolitan Magistrate 60th Court, Kurla, Mumbai in CC No.15036/SS/2007. Vide judgment and order dated 14th March, 2012, the revision applicant has been sentenced to suffer simple

imprisonment for one year. He was also directed to pay compensation of Rs.6,50,000/- to the complainant within two months from the date of the order. The revision applicant, thereafter, preferred an Appeal before the Sessions Court, which has been dismissed vide judgment and order dated 20th March, 2015. The revision applicant was directed to deposit the compensation of Rs.5,20,000/- in the trial Court and the complainant was permitted to withdraw the said amount of Rs.5,20,000/- along with the amount of Rs.1,30,000/- deposited earlier by the accused after the revision period is over.

2 Thereafter, the accused had preferred criminal Revision Application No.222 of 2015, before this Court. The sentence imposed against the revision applicant has been suspended by this Court on a condition that the revision applicant shall deposit the balance amount of Rs.5,20,000/- in the trial Court within a period of three weeks from the date of the order passed by this Court on 1st July, 2015.

3 The aforesaid amount of Rs.5,20,000/- has been deposited by the revision applicant in the trial Court pursuant to the order dated 1st July,2015. The original complainant, has,

thereafter preferred this application for withdrawal of the amount.

4 Learned advocate for the applicant submitted that the trial Court vide order dated 14th March, 2012, had directed the accused to pay compensation of Rs.6,50,000/- to the complainant. The said amount was allowed to be withdrawn by the complainant as per the orders passed by the Appellate Court. There is concurrent finding of two orders against the accused. The Revision Application preferred by the accused has been admitted by this Court. However, the defence of the accused has not been considered by the two courts and the revision applicant has been convicted by both the Courts.

5 Learned counsel for the revision applicant/accused submits that the complainant has failed to prove the liability. He did not possess the certificate from his predecessor. In absence of such a certificate, the complainant is not entitled for the compensation. Both the Courts have not considered the said factual aspect. It is also submitted that the complainant is relying upon the forged documents. The Revision Application preferred by the accused has been admitted by this Court and, therefore,

pending the Revision Application, the complainant could not be allowed to withdraw the said amount.

6 I have considered the arguments advanced by both the parties. The accused was convicted by the trial Court on the basis of the evidence advanced by the complainant. The conviction was confirmed by the Appellate Court. The Appellate Court had also permitted the complainant to withdraw the amount deposited by the complainant. The cheque was issued in the year 2007. There is concurrent finding of two Courts against the revision applicant. In the circumstances, the application can be allowed on certain conditions:

:: ORDER ::

- (i) Criminal Application No.143 of 2017, is allowed;
- (ii) The complainant is allowed to withdraw the amount of Rs.6,50,000/-, along with accrued interest, if any, deposited in the Court of learned J.M.F.C. 60th Court, Kurla, Mumbai, in CC No.15036/SS/2007. The withdrawal shall be subject to the final decision in the Revision Application;

(iii) The complainant is directed to file an undertaking before this Court within a period of two weeks from today that the amount withdrawn by the complainant shall be paid to the respondent-accused in case the Revision Application is allowed by this Court.

(PRAKASH D. NAIK, J.)