

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPLICATION NO. 375 OF 2015**

**Mr. Reggie Lawrence Fernandes**

**..Applicant**

**Vs.**

**State of Maharashtra & Anr**

**..Respondents**

**Mr. H. S. Thakkar for the Applicant**

**Mr. D. V. Rajbhar for the Respondent No.2**

**Mr. Deepak Thakare P.P a/w Mr. A. D. Kamkhedlar APP for the Respondent State**

**CORAM :R. M. SAVANT, &  
REVATI MOHITE DERE,JJ  
DATE : 6<sup>th</sup> JUNE, 2018**

**P.C.**

1           The above Application has been filed for quashing and setting aside of the proceedings being C. C. No.226/PW/2004 pending before the Learned Additional Chief Metropolitan Magistrate, 9<sup>th</sup> Court at Bandra, Bombay. The said case has arisen out of C. R. No.113 of 2003 registered with the Mahim Police Station for the offence punishable under Sections 465, 467, 468, 471, 420 and 34 of the IPC. The above Application has come up for admission before this Court from time to time. On 11-1-2016 a statement came to be made by the Learned Counsel for the Applicant that the entire loan amount of Rs.6,75,000/- has been paid to the Respondent No.2. Relying upon the said statement a Division Bench of this Court by way of ad-interim relief stayed the further proceedings in C.C. No.226/PW/2004. As indicated above,

the above Application has thereafter appeared before this Court from time to time, on 15-9-2017 the Learned Counsel appearing for the Respondent No.2 i.e. the first informant sought time to put in an affidavit to deal with the case of the Applicant that he has paid the entire amount of Rs.6,75,000/-. Accordingly an affidavit has been filed by the Respondent No.2 which is affirmed on 30-11-2017 and which is appearing from page 91 onwards in the writ paper book.

2 Suffice it would be to state that the case of the Applicant that he has paid the entire amount has been denied in the said affidavit. We therefore called upon the Learned Counsel appearing for the Applicant to produce the evidence in respect of the payment of Rs.6,75,000/- as is claimed by the Applicant. The Learned Counsel for the Applicant to support the case sought to rely upon the order passed by the Learned Sessions Judge which is annexed to the writ paper book. The Learned Sessions Judge was pleased to grant bail to the Applicant on the condition that the Applicant deposits a sum of Rs.2,50,000/- with the Respondent No.2. It is the case of the Respondent No.2 that no such amount has been deposited. The Consent Terms arrived at between the parties were also sought to be relied upon, in terms of which Consent Terms the Applicant was to make an upfront payment of Rs.75,000/-. The said amount according to the Learned Counsel for the Respondent No.2 has also not been paid.

3           We had specifically kept the above application today so as to give an opportunity to the Learned Counsel for the Petitioner to produce the evidence of the payment of the said sum of Rs.6,75,000/-. Today the Learned Counsel for the Applicant seems to have changed his stand dramatically to contend that the matter being old the papers are untraceable and it was also sought to be contended that the papers might have been lost in the deluge which took place in Mumbai in July 2005. In the light of what has transpired earlier which we have adverted in brief in the earlier part of this order, it is not possible to countenance the submission made by the Learned Counsel appearing for the Applicant. In the absence of any evidence being produced by the Applicant in support of his case that the entire loan amount of Rs.6,75,000/- has been paid, we are afraid no relief can be granted to the Applicant. The above Criminal Application is accordingly dismissed.

**[REVATI MOHITE DERE, J]**

**[R.M.SAVANT, J]**