

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.230 OF 2018
IN
CRIMINAL REVISION APPLICATION NO.209 OF 2018
WITH
CRIMINAL REVISION APPLICATION NO.209 OF 2018

1. Mohinder Khurana, Erstwhile MD of company
2. M/s.Kush Prints Pvt.Ltd., A company under
liquidation, At E-1109, RIICO Industrial Area,
Phase-3, III Bhiwadi (Rajasthan).

Applicants

versus

1. Sanjay Gupta, 85, Meghdhoot Chamber,
2nd Floor, Modi Street, Fort, Mumbai-400031.
2. The State of Maharashtra

Respondents

Mr.Pramod Pandey for applicants.

Mr.Sandesh Chari I/by Nilesh Kumbhar for respondent no.1.

Mrs.N.S.Jain, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 28th June 2018

PC :

1. This is an application for suspension of sentence and grant of bail. The applicant no.1 is convicted for offence u/s 138 of Negotiable Instruments Act by learned Metropolitan Magistrate, 28th Court, Esplanade, Mumbai vide judgment and order dated 30th April 2015. He was sentenced to simple imprisonment for one month. The accused nos.1 and 2 were directed to pay Rs.2,40,094/- with simple interest @ 9% p.a. from the date of cheque till actual payment of entire amount of cheque plus Rs.10,000/- towards costs within three

months, and in default, accused no.2 to suffer simple imprisonment for two months. Criminal Appeal No.613 of 2015 preferred by applicant has been dismissed by Additional Sessions Judge for Greater Mumbai vide judgment and order dated 15th January 2018.

2. Learned counsel for applicants submits that the accused-applicant no.1 company was under liquidation from 25th April 2006 and therefore it was incumbent to bring the Official Liquidator on record on behalf of the company. The plea was recorded against the applicant without Liquidator being brought before the Court. It is, therefore, stated that in view of Section 141 of Negotiable Instruments Act and the decisions of the Courts, the applicants ought not to have convicted for the said offence.

3. Learned counsel for respondent no.1-complainant submitted that the plea was recorded on 18th August 2008 which was not challenged by the applicant no.1. During pendency of the appeal the Appellate Court had directed the applicants to deposit 25% amount of the compensation, which order was not complied. It is further submitted that the applicant was not present at the time of decision of Appellate Court. He further submitted that the conviction warrant was issued against applicant no.1 in the proceedings, which could not be executed on account of several reasons. It is also submitted that there are several cases pending against the applicants. Taking into consideration the aforesaid circumstances, the sentence can be suspended subject to applicant no.1 depositing 50% of the amount of compensation within a period of six months from today. Hence, I pass following order :

ORDER

- (i) Pending Criminal Revision Application No.209 of 2018, the sentence of imprisonment awarded by learned Metropolitan Magistrate, 28th Court, Esplanade, Mumbai in Case No.4153/SS/2012 vide judgment and order dated 30th April 2015 and confirmed in Criminal Appeal No.613 of 2015 by Additional Sessions Judge for Greater Mumbai vide judgment and order dated 15th January 2018 is suspended and the applicant is directed to be released on interim bail on furnishing PR bond in the sum of Rs.20,000/- with one or more sureties in the like amount;
- (ii) The applicant no.1 shall deposit 50% amount of the compensation on or before 9th August 2018;
- (iii) The applicant no.1 shall furnish his correct address before the Trial Court while executing the bail bond;
- (iv) The sentence is suspended subject to depositing the amount as stated above. The amount be deposited in the Trial Court;
- (v) The applicant no.1 is permitted to furnish cash surety in the sum of Rs.20,000/- in lieu of surety till 9th August 2018;
- (vi) Stand over to 9th August 2018 for reporting compliance.

(PRAKASH D. NAIK, J.)

MST