

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

CRIMINAL APPLICATION NO. 291 OF 2018

IN

CRIMINAL REVISION APPLICATION NO. 249 OF 2017

Maruti Indo Coal & Ors.

... Applicant

Vs.

Shree Durga Iron & Steel & Anr.

... Respondents

...

Mr. Rajesh Khobragade for the applicant.

Mr. Jatin P. Shah for the Respondent No.1.

Mr. S.R. Shinde, APP for the Respondent-State.

...

CORAM : PRAKASH D. NAIK, J.

DATE : 13th JULY, 2018.

P.C.

1. The applicants were convicted for an offence punishable under Sections 138 of the Negotiable Instrument Act vide Judgment and Order dated 27th February, 2017 passed by Metropolitan Magistrate 63rd Court, Andheri, Mumbai. The applicants thereafter preferred an appeal before the Sessions Court viz Criminal Appeal No. 81 of 2017 challenging the Judgment and Order of conviction. The appellate Court directed the applicants to deposit an amount of Rs.40,00,000/- in the trial Court as early as possible before pressing the application Exh.4 and 5 for suspension

of sentence and grant of bail.

2. Being aggrieved by the said order, the applicants preferred Criminal Revision Application No. 249 of 2017 before this Court challenging the order dated 5th April, 2017 passed by the Sessions Court. On hearing the parties, this Court by order dated 12th July, 2017 set aside order dated 5th April, 2017 by consent. Since, the counsel representing both the parties stated that the appeal before the Sessions Court was listed for hearing on 11th August, 2017, the Sessions Court was directed to hear the said matter on merits and pass reasoned order. The Court also directed that since the applicants were in custody, the Court may schedule the earlier date preferably in the fourth week of July. The said revision application was disposed off on the aforesaid terms with liberty to apply to the Sessions Court. It was further directed in the event of applicants moving the Sessions Court for early hearing in the fourth week of July, notice be given to the advocate for Respondent No.1.

3. Thereafter the applicants approached this court again by preferring Criminal Application No. 372 of 2017. It was submitted that parties have arrived at amicable settlement for a sum of Rs.34,00,000/-. Sum of Rs.5,00,000/- was given to complainant

on 14th July, 2017. The consent terms were tendered in the Court in which it was stated that by cheque Rs.2,78,000/- paid by accused to complainant. It was further stated that Rs.6,55,000/- would be given by accused to the complainant on or before 3rd August, 2017, Rs.6,55,000/- on or before 21st August, 2017, Rs.6,55,000/- on or before 8th September, 2017 and Rs.6,55,500/- on or before 29th September, 2017. In view of the consent terms, this Court passed order dated 18th July, 2017, wherein it was observed that applicants seek permission to compound the offence in terms of consent terms. In view of the consent terms tendered by the parties in this Court proceeded to pass order dated 18th July, 2017 recalling the earlier order dated 12th July, 2017. It was further observed that to ensure the cheques in respect of four installments referred in consent terms were honoured provisional bail is granted to the applicant Nos. 2 and 3 on certain terms and conditions. Accused were directed to furnish P.R. Bond of Rs.50,000/- each. The matter was then adjourned to 3rd October, 2017 for compliance.

4. It appears that the consent terms were not complied in entirety. The respondent had moved this Court for seeking action against the applicant for not complying consent terms. This Court

by order dated 26th February, 2018 observed that the matter already disposed of and at this stage no orders are necessary and it is open for the original complainant to approach the Court below for appropriate orders in the matter of cancellation of provisional bail.

5. Thereafter, the complainant preferred an application before the trial Court for issuance of conviction warrant. Learned Magistrate by order dated 11th April, 2018 allowed the application for issuance of conviction warrant while allowing the said application. From the said order, it appears that the respondent had approached trial Court earlier also for issuance of conviction warrant which application was rejected on 5th January, 2018 on the ground that there was nothing on record to show that Criminal Revision Application No. 249 of 2017 is disposed off by High Court and no affidavit in support was filed by complainant in respect of whatever occurred about consent terms after High Court order dated 18th July, 2017. Thereafter, order dated 26th February, 2018 was passed by this Court and in view of that apparently the application was entertained and by order dated 11th April, 2018 conviction warrant was issued by trial Court.

6. The applicants preferred an application on 25th May, 2018

for stay of conviction warrant issued by the trial Court. The application preferred by the applicants was rejected by the learned Magistrate on 31st May, 2018. The trial Court which rejecting the said application had observed that, the accused had preferred an appeal against conviction before Sessions Court. The accused had to knock the door of appellate Court and decline to stay conviction warrant. Thereafter, the present application is preferred by the applicant with the prayers that the time to comply the consent terms dated 17th July, 2017 be extended by ten weeks in furtherance to make entire amount mentioned in the consent terms. It is also prayed that the operation and execution of conviction warrant dated 11th April, 2018 issued by the trial Court be stayed and the provisional bail granted vide order dated 18th July, 2017 be continued, the applicants be permitted to approach Sessions Court in Criminal Appeal No. 81 of 2017 for suspension of sentence and grant of bail and to grant protection to approach Sessions Court. It is contended that provisional bail granted by High Court is not cancelled and despite that conviction warrant was issued. The applicants had paid substantial amount and ready to comply consent terms, the conviction warrant was sought by misrepresentation.

7. This application was heard by this Court on 19th June, 2018 when the Court made it clear that the relief sought in this application cannot be granted, hence the request was made for keeping the matter on 20th June, 2018. When the matter came for hearing on 20th June, 2018, the counsel for the applicant on instructions submitted that he would hand over the cheque of Rs.3,00,000/- to the advocate for complainant. The cheque was indeed handed over to the advocate of complainant during the course of hearing of this application. It was further submitted that that cheque of Rs.11,00,000/- will be handed over to the complainant on 22nd June, 2018 which would be post dated cheque of 9th July, 2018. It was pointed out earlier in accordance with consent terms the balance amount was Rs.14,47,000/-. It was also noted by this Court in the order dated 20th June, 2018 that the balance principle amount according to the complainant is Rs.14,47,000/-. In view submissions made therein the application was adjourned to 22nd June, 2018. On the next date of hearing i.e 22nd June, 2018, it was submitted at the instance of the applicant that the cheque of Rs.11,00,000/- will be handed over to the complainant on same day, which would be post dated cheque dated 9th July, 2018. It was pointed out by the counsel for the

complainant that the cheque of Rs.3,00,000/- which was handed over on 20th June, 2018 was dishonoured and the further cheque as stipulated in order dated 20th June, 2018 has not been handed over. The counsel for the applicant sought time and requested the matter be kept on 27th June, 2018. The matter was adjourned to 27th June, 2018 while passing order dated 22nd June, 2018 the aforesaid aspects were recorded by this Court and it was also noted that conduct of the applicants requires to be deprecated. Subsequently, the matter came up for hearing on 27th June, 2018. The counsel for the applicant submitted that an amount of Rs.3,00,000/- has been deposited by way of pay order in the account of respondent-complainant. The counsel for the respondent-complainant was not aware about the said position and he stated that he would like to verify the said aspect. The counsel for the applicant however handed over four cheques amounting to Rs.11,00,000/- to the advocate for the respondent No.1. In order to ascertain the deposit of Rs.3,00,000/- and the status of the four cheques handed over on that day, application was adjourned to 6th July, 2018. However, considering the submissions made by the advocate for the applicant and the cheque of Rs.11,00,000/- being handed over to the advocate for

the complainant, this Court had directed that the conviction warrant issued against the applicant may not be executed till the next date of hearing. It was also noted that interim order is subject to clearance of the cheques handed over by the applicants. The matter was adjourned to 6th July, 2018.

8. On 6th July, 2018, the application was again adjourned to 10th July, 2018, at the request for the advocate of the applicant. It was brought to the notice of this Court by the advocate of respondent-complainant that the cheques issued by the applicant for an amount of Rs.11,00,000/- were dishonoured. The application was adjourned at the request of advocate for applicants to 10th July, 2018 without extending interim relief granted earlier. Thereafter, the application was adjourned to 12th July, 2018.

9. It was also pointed out that the statement made by the applicants with regard to the pay order being deposited into the account of the respondent-complainant was found to be false. As according to the complainant no such pay order was credited, except depositing the amount of Rs.2,90,000/-. The amount as agreed has not been deposited by the applicants. It is noted that the applicants had sought adjournments time and again by making submissions with regards depositing of amount which were found

to be false. The cheques which were handed over to the respondent-complainant during the course of hearing of the application were dishonoured. It is apparent that the applicant tried to mislead the Court by making submissions which were found to be false and the statements made in Court were not complied. The conduct of the applicant therefore requires to be deprecated. It was already made clear to the applicant when the matter was argued on the first date of hearing, this Court was not inclined to entertain this application and in that event, the time was sought repeatedly to deposit the amount, however, statements made repeatedly were not complied.

10. Taking into considerations the factual aspect of the matter as well as the aforesaid circumstances, the relief sought in this application cannot be granted. This Court by order dated 26th February, 2018 had observed that no proceedings are pending in this Court and it is open to complainant to approach Court below for appropriate relief in the matter of cancellation of provisional bail. The Trial Court has thereafter issued a conviction warrant against the applicants. The trial Court and the concerned parties will be at liberty to execute the said conviction warrant. The applicants had preferred an application for stay of conviction

warrant before trial Court which was rejected by said Court and it was observed that the applicants can approach appellate Court. The applicants however preferred the application before this Court. It is pertinent to note that the applicants were initially directed to deposit of Rs.40,00,000/- by appellate Court, which order was set aside with consents of both parties and the Sessions Court were directed to hear appeal since the accused were in custody. Thereafter, the applicants approached this Court with consent terms and the order dated 12th July, 2017 was recalled. Provisional bail was granted. Consent terms were not complied in entirety. It is pertinent to note that in clause 9 of the consent terms, it was stated that in default or breach on the part of the accused in compliance of the consent terms including the schedule of payment the provisional bail granted to the applicant would be automatically cancelled without further reference to the Court. It is submitted by both parties that the appeal before the Sessions Court is still pending and the applicants will be at liberty to pursue said appeal.

11. In view of above, the application deserves to be dismissed. Taking into consideration the earlier orders and the fact the conviction warrant has been issued against the applicants. The

applicants can pursue the appeal and application for suspension of sentence after surrender. The appellate Court will be at liberty to suspend sentence by reviving order dated 5th April, 2017. The amount paid by the applicants to complainant in respect to consent terms be adjusted towards compensation amount or conditional order for suspension of sentence, if any, passed by appellate Court. The appeal be dealt with in accordance with law.

12. Criminal Application No. 291 of 2018 stands disposed of.

Sachidanand
Kuttan Nair

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by Sachidanand
Kuttan Nair
Date:
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(PRAKASH D. NAIK, J.)