

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

**CRIMINAL APPLICATION NO.839 OF 2017
in
CRIMINAL APPLICATION NO.394 OF 2016**

1.Parshva Prints and Arts
through its Proprietor

2.Jinesh Bipin Patni

.. Applicants

vs

1.State of Maharashtra

.... Respondents

2.D.R.Cosmetics P.Ltd

.....

Mr.V.V.Salunkhe for Applicant in ALP No.394/2016

Mr.K.P.Dave for Applicant in APPP No.839/2017

Ms.V.S.Mhaispurkar Additional Public Prosecutor for State

Coram : PRAKASH D.NAIK, J

Date : 5 FEBRUARY 2018

P.C

This is an application preferred by the accused seeking withdrawal of an amount of Rs.2,85,000/- which was deposited by the accused before the Sessions Court. The applicant- accused was tried for the offence under section 138 of the Negotiable Instruments Act, 1888 and was convicted vide judgment and order dated 1.11.2014 passed the Court of J.M.F.C, Nasik. The accused were sentenced to suffer rigorous imprisonment for one month and were

directed to pay a compensation of Rs.7,00,000/-.An appeal preferred by the accused was allowed by the Sessions Court and the accused were acquitted. The complainant has preferred an appeal against the order of acquittal before this Court.

2. Learned Advocate for the Applicant-accused submitted that the appellate Court acquitted the accused and therefore, the accused is entitled for withdrawal of Rs.2,85,000/- deposited by the accused during the pendency of the appeal. It is further submitted that the appellate Court had given sufficient opportunity to the complainant to adduce additional evidence in support of the authorization to the complainant. However, the complainant has failed to bring on record any evidence to support the authorization. It is further submitted that the Sessions Court has passed a well-reasoned order for acquitting the accused. It is submitted that merely tendering documents of authorization is not sufficient but, it has to be proved before the Court. It is submitted that in any case, the accused are acquitted of the charges and during the pendency of the appeal, the accused were directed to deposit the amount and

therefore, in view of the order of acquittal, the accused is entitled for withdrawal of the said amount.

3. Learned counsel for the respondent-complainant in this application has vehemently opposed the grant of relief in this application. It is submitted that there is a serious infirmity in the order of acquittal passed by the Sessions Court. It is submitted that there was sufficient evidence before the Court in support of the authorization of the complainant and the appellate Court has committed an error in acquitting the accused. It is therefore, submitted that the accused may not be permitted to withdraw the said amount and the amount may be retained in the Court during the pendency of the appeal against the order of acquittal.

4. In an application preferred by the original complainant seeking leave to file appeal against the order of acquittal leave has been granted and the appeal has been admitted. However, the fact remains that the accused are acquitted by the appellate Court.

5. Whether the impugned judgement of acquittal is required to be set aside or to be confirmed is a fact will have to be

decided at the final hearing of the appeal against the order of acquittal. The accused were directed to deposit the said amount while the conviction was in operation which was set aside subsequently by the appellate Court.

6. In the circumstances, application for withdrawal of the amount deserves to be allowed on certain conditions. Hence, I pass the following order :

O R D E R

(i) The Applicant/accused is permitted to withdraw Rs.2,85,000/- deposited before the Sessions Court in Criminal Appeal No.227 of 2014.

(ii) The Applicant-accused is directed to furnish an undertaking within one week before this Court that the amount would be returned to the complainant in the event the appeal preferred by the complainant is allowed by setting aside order of acquittal.

Application is disposed of.

{PRAKASH D.NAIK, J}

RNG

5/5

28-839.17`