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

**CRIMINAL APPLICATION NO. 510 OF 2018
IN
CRIMINAL REVISION APPLICATION NO. 330 OF 2018**

Dilip Hirji GanatraApplicant

V/s.

Mr. Lalit Anandji Mehta and anotherRespondents

Mr. Mathews Nedumpara i/b Mr. R. R. Nair for the applicant
Mr. Omkar Nagvekar i/b Ms. Prabha Badadare for respondent no. 1

CORAM : NITIN W. SAMBRE, J.

DATE : 15th OCTOBER, 2018.

P.C.

Pursuant to the order dated 10/10/2018 passed in the present proceeding, today, matter is placed before me for deciding the application.

2 Heard Shri. Mathews Nedumpara, the learned counsel for the applicant and Shri. Omkar Nagvekar for respondent no. 2.

3 The present applicant came to be convicted by the learned Metropolitan Magistrate, 50th Court, Vikhroli, Mumbai vide Judgment and Order dated 17/11/2015 for an offence punishable under Section 138 of the Negotiable Instruments Act with a direction to undergo three months simple imprisonment and to pay compensation of Rs. 10 Lakhs.

4 The appeal being Criminal Appeal No. 1033 of 2015 before the learned Additional Sessions Judge, City Civil Court, Mumbai came to be dismissed on 13/11/2017 thereby confirming the order of conviction. As such, this Revision Application.

5 This Court, while hearing the matter on 05/04/2018 recorded a finding that out of the amount of Rs. 10 Lakhs, applicant/accused claimed to have deposited total amount of Rs. 2.5 Lakhs before the Court of Magistrate and this Court. The applicant/accused and has undertaken vide affidavit-cum-undertaking dated 05/04/2018, that he shall deposit balance amount of compensation of Rs. 7.50 Lakhs

in three installments of Rs. 2.50 Lakhs each, within period of 3 months. Based on the said undertaking, this Court passed an order on 05/04/2018 recording the aforesaid undertaking, admitting his Revision and ordering his release on bail. A condition was incorporated in the order dated 05/04/2018, if the amount as undertaken herein above, if not deposited, bail granted shall automatically stands cancelled.

6 Respondent/complainant, having noticed that order dated 05/04/2018 based on undertaking furnished by the applicant/accused is not complied with, moved before the learned Metropolitan Magistrate seeking issuance of conviction warrant. It is in this background, present application is moved by the applicant/original accused seeking stay to the order dated 24/09/2018 passed by the learned Metropolitan Magistrate, 50th Court, Vikhroli, Mumbai.

7 At the outset, Shri. Nedumpara, the learned counsel for the applicant/accused would urge that in view of the amendment dated

02/08/2018 to the Negotiable Instruments Act, 1881 the applicant/accused is not liable to deposit compensation of more than 20% and in that view of the matter, order by this Court directing the applicant/accused to deposit amount of compensation is without any authority of law and contrary to the said amendment to the Negotiable Instruments Act, 1881. Another submission of Shri. Nedumpara is that provisions of Negotiable Instruments Act, 1881 are penal in nature and benefit of doubt is always given to the accused is a settled position of law. According to him, there is enough material on record to raise strong doubt about the merits of the case of the complainant and that being so, the condition of deposit is unreasonable.

8 Per contra, the learned counsel for the respondent/complainant supports the order.

9 Perused the entire proceedings.

10 In the present application what is sought by the

applicant/accused is stay to the order dated 24/09/2018 passed by the Metropolitan Magistrate, 50th Court, Vikhroli, Mumbai thereby notice is issued to the applicant calling upon him to submit as to whether the order of this Court passed on 05/04/2018 and 12/04/2018 are complied with or not.

11 The order of the Metropolitan Magistrate passed on 24/09/2018 is not questioned on merit in the present Revision. Apart from above, the order of deposit of amount passed by this Court on 05/04/2018 which was corrected subsequent thereto upon request of the applicant/accused is based on the undertaking in the form of concession given by the applicant/accused. Once this Court having accepted the undertaking of the applicant/accused and passed a conditional order based on the same, there is no question of present applicant to seek revocation of the same. Even if the contention of Shri. Nedumpara that the amendment of 2018 to the Negotiable Instruments Act is retrospective, same will have hardly any bearing over the matter in question when the applicant has come out with an undertaking which is accepted by this Court.

12 At this stage, even the issue of benefit of doubt cannot be extended to the applicant/accused. In view thereof, I hardly notice any reason to cause interference. Application, in my opinion, devoid of merits. As such, stands rejected.

[NITIN W. SAMBRE, J.]