

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.724 OF 2016  
IN  
CRIMINAL REVISION APPLICATION NO.188 OF 2016  
AND  
CRIMINAL APPLICATION NO.231 OF 2016  
WITH  
CRIMINAL REVISION APPLICATION NO.188 OF 2016

Yatin S. Prabhavalkar  
versus

Applicant

Hemant Krishna Varadkar and another

Respondents

Mr.R.M.Raghuwanshi i/by Manuj Mirchandani with S.A.Bhagwat and  
R. Dubey for applicant in APPR.724 of 2016.

Mr.Hitesh P. Shah for Applicant in APPR.231 of 2016.

Ms.Neeta S. Jain, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 17<sup>th</sup> January 2018

PC :

1. Criminal Application No.724 of 2016 is filed seeking a direction for withdrawal/release of the bank guarantee which has been furnished by the applicant/original complainant before the Sessions Court at Mumbai.

2. The applicant is the original complainant. The respondent no.1 in this application is the accused who had filed Criminal Revision Application No.188 of 2016 before this Court. The revision application has been admitted. The revision applicant was directed to be released on bail after suspension of sentence, subject to

condition that he shall deposit the compensation amount of Rs.1 crore in the registry of Appellate Court within a period of four weeks. It is apparent that the revision applicant has not complied the said condition. However, an application for reduction in the deposit amount (of the compensation amount as directed) has been filed by the revision applicant, which is numbered as Criminal Application No.231 of 2016.

3. This Court by order dated 16<sup>th</sup> December 2015 passed in Writ Petition No.2140 of 2015 and Writ Petition No.2141 of 2015 had directed that Rs.67.50 lakhs deposited by the accused, shall be handed over to the complainant on the condition that the complainant shall submit an undertaking that he will redeposit the amount in this Court if the criminal appeal succeeds. It was further directed that the complainant shall also in addition to submitting the undertaking, submit a bank guarantee to the tune of Rs.20 lakh to the satisfaction of the Sessions Court.

4. The appeal filed by the revision applicant was thereafter dismissed by the Sessions Court vide judgment and order dated 7<sup>th</sup> March 2016. The complainant thereafter filed an application before the Appellate Court for withdrawal of the bank guarantee executed by him in accordance with order dated 16<sup>th</sup> December 2015. The said application has been rejected by the Sessions Court on the ground that the order directing execution of bank guarantee was passed by the High Court.

5. In the circumstances, the applicant/original complainant has filed this application for withdrawal of the bank guarantee. It is

submitted that the accused has been convicted by the Trial Court which conviction has been confirmed by the Appellate Court. The condition for execution of bank guarantee was directed by this Court when the appeal was pending as a corollary to condition-(a) stipulated in order dated 16<sup>th</sup> December 2015 wherein the complainant was directed to give an undertaking that he will redeposit the amount in this Court if criminal appeal succeeds. It is submitted that on account of dismissal of the appeal, the bank guarantee may be directed to be withdrawn. It is further submitted that the cheques were issued by the accused in the year 2010. Learned counsel for revision applicant submitted that the revision applicant has not complied with the order dated 4<sup>th</sup> April 2016 passed by this Court in Criminal Application No.167 of 2016.

6. Learned advocate for the revision applicant submitted that he has good case on merits and the complainant shall not be allowed to withdraw the bank guarantee submitted by the complainant. It is further submitted that if the revision applicant succeeds in the revision application, it will be difficult to recover the amount from the complainant.

7. I have perused the order dated 16<sup>th</sup> December 2015 passed by this Court as well as other documents which are part of this application. The revision applicant has been convicted by the Trial Court for offence under Section 138 of Negotiable Instruments Act vide judgment and order dated 3<sup>rd</sup> September 2013 wherein the revision applicant was sentenced to suffer imprisonment for three months and was directed to pay compensation of Rs.4.50 crores. The revision applicant thereafter filed an appeal, which was

dismissed. During pendency of the appeal, the revision applicant has deposited Rs.67.50 lakhs, which was allowed to be withdrawn by the complainant subject to the conditions stipulated in the order dated 16<sup>th</sup> December 2015. It is noted that the appeal filed by the accused has been dismissed. In the facts and circumstances, it would be appropriate to allow the application by permitting the applicant to withdraw the bank guarantee of Rs.20 lakh. It is also pertinent to note that the revision applicant has not complied the order dated 4<sup>th</sup> April 2016. The revision applicant was ordered to pay compensation of Rs.4.50 crores out of which Rs.67.50 lakh was deposited during pendency of the appeal.

8. In the circumstances, I pass following order :

**ORDER**

- (i) Criminal Application No.724 of 2016 is allowed;
- (ii) The applicant herein/complainant is permitted to withdraw the bank guarantee of Rs.20 lakh executed by him before the Appellate Court, however, the applicant is directed to give a fresh undertaking that he will bring back the amount withdrawn by him in case the revision application succeeds;
- (iii) Criminal Application No.724 of 2016 is disposed of.

(PRAKASH D. NAIK, J.)

MST