

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

**CRIMINAL APPEAL NO.1469 OF 2018**

Bony Kapoor

...Appellant

vs.

The State of Maharashtra and Anr.

...Respondents

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Mr. Bhavesh Parmar a/w Mr. Vivekanand Akshali i/b Devmani Shukla for the Appellant.

Mr. S. S. Pednekar, APP for the Respondent/State.

Mr. C. H. Mehta for the Respondent No.3.

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**CORAM : B. P. DHARMADHIKARI &  
SMT. SADHANA S. JADHAV, JJ.  
DATE : 29/11/2019.**

**PC.:**

. In this proceeding filed under section 11 of MPID Act non applicant in Trial Court has questioned order dated 22/3/2017 passed in M.A. No.297/2004 on the ground that the said Court ought to have given appellant opportunity as he doubted documents. Second contention is deletion of paragraph No.23 from the impugned order vitiates the reasoning in entire order and necessitates its quashing. Last contention is deletion of paragraph No.23 has been ordered on 10/4/2017 behind the back of the appellant and hence the said exercise is void.

2. Learned APP for respondent Nos.1, 2 and Respondent No.3 Advocate in person are strongly opposing any intervention. They submit that deletion of paragraph 23 does not in any way affect the findings or process of application of mind by trial Court. Trial Court may have found the said paragraph duplication and therefore may have deleted it. It is

further submitted that ample opportunity was given to the appellant to demonstrate that he had cleared liability of Rs.29 Lakhs but, he remained satisfied only by filing affidavit of Mr. Nalin Choksey.

3. With the assistance of respective counsel we have perused papers.

4. Affidavit tendered by Mr.Nalin Choksey dated 23/11/2016 shows that in the year 1999-2000 Mr.Nalin Choksey had to recover Rs.29 Lakhs from one Ajay Thakkar Ajay in turn had to recover amount of Rs. 29 lakhs from the present appellant. In this situation after mutual understanding Mr. Nalin Choksey took Mercedes Benz car worth Rs.29 lakhs. Thus he claims that his dues were received and claim was satisfied.

5. This affidavit finds consideration in impugned order. Trial Court has found that no documents in support of said transfer of motor vehicle issued by RT office or any other authority were produced.

6. Appellant has attempted to urge that he has pointed out to trial Court specifically this payment to Mr.Nalin Choksey in time and had relied upon certain documents. Our attention is invited to paragraph No.5 of the impugned order to show that some documents were relied upon to substantiate this contention.

7. Respondent No.3 does not dispute the existence of plea of adjustment/payment in kind taken by the present appellant. His contention is this payment has not been established. Appellant contends that as inquiry is of summary nature, the trial Court ought to have given appellant notice and appellant could in that event produced other evidence to substantiate affidavit of Mr. Nalin Choksey. He submits that there is nothing on record to

disbelieve that affidavit, effort made by trial Court to find support therefor is unsustainable.

8. Learned counsel for the Appellant has during arguments submitted that the appellant may deposit without prejudice to his contentions and rights in the matter, amount of Rs.29 Lakhs if opportunity to place necessary documents is extended to him. Respondent No.3 submits that Rs.29 lakhs were due in the year 2000 and now including interest, that amount is much more. He therefore insists on direction to the appellant to deposit interest amount also.

9. Taking over all view of the matter, we find that if there was really an adjustment and transfer of car, it can be demonstrated through registration certificate and other documents pertaining to that vehicle. Similarly, the audited balance-sheet of appellant can also show that after such adjustment, the loan liability was shown as discharged.

10. As appellant has offered to pay amount of Rs.29 Lakhs i.e. the principal amount allegedly claimed to be due ,we are inclined to grant the appellant an opportunity. If the appellant deposits said amount with the trial Court within 4 weeks from today, the trial Court shall give an opportunity of hearing to the appellant as also to respondent No.3 and other depositors and take fresh decision in the matter within next 8 weeks. Only to facilitate this exercise, we quash and set aside the impugned order dated 22/3/2017.

11. We direct parties to appear before trial Court on 16/12/2019 and to abide by its directions thereafter.

12. Respondent No.3 submits that amount if deposited by the

appellant be invested in any Nationalized Bank by trial Court so that it earns some interest. We permit trial Court to consider this request at the earliest.

**(SMT. SADHANA S. JADHAV, J.)**

**(B. P. DHARMADHIKARI, J.)**