

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 309 OF 2019
IN
CRIMINAL REVISION APPLICATION NO. 147 OF 2019

M/s. Jash International and Anr.

..Applicants.

V/s.

Rajesh Manubhai Shah and Anr.

..Respondents.

Mr. S.J.Lehera, Mr.Yogesh Gandhi a/w.Smt.Lovina Lehera for the applicants in Cr.Application No.309 of 2019.

Mr. Manish Bohra for the applicants in Revn.147 of 2019.

Mr.R.M.Pethe, APP for the State.

CORAM: A.S. GADKARI, J.

DATE : 5th July, 2019.

P.C.:-

This is an application for recalling of the order dated 19th March, 2019 passed by this Court in Criminal Application No. 143 of 2019. Para No. 5(i) of the said order dated 19th March, 2019 reads as under:-

“5(i) The impugned judgment and sentence dated

04.02.2019 is suspended pending revision;”

2 The learned counsel for the applicant submitted that there is an error apparent on record as the predecessor in title of this Court, while passing the said order dated 19th March, 2019 has inserted the word 'judgment' in the said sentence. He submitted that said order was passed without giving notice to the applicant. He further submitted that the applicant is suffering from kidneys failure and has undergone medical treatment in that behalf. He submitted that the Appellate Court while dismissing Appeal No. 252 of 2012 has upheld the conviction and amount of compensation imposed by the trial court. He submitted that in view thereof the order dated 19th March, 2019 may be recalled and/or suitably be modified.

3 The record and proceedings indicates that the conviction and sentence imposed upon the applicant by the Trial Court has been confirmed by the Appellate Court and the Appellate Court has directed the respondent no.1-accused to pay compensation of Rs.21,00,000/- to the applicant.

4 The learned counsel for the respondent no.1-accused, on

instructions, submitted that till date the applicant has deposited Rs.6,90,000/- in the Registry of Sessions Court.

In view thereof, respondent no.1 is directed to further deposit a sum of Rs.3,60,000/- (Rupees Three Lakhs Sixty Thousand only) in the Registry of the Sessions Court at Mumbai within a period of three weeks from today.

5 It appears from the record that the word 'judgment' in para 5(i) of the order dated 19th March, 2019 has been erroneously typed and the same is required to be deleted from the said order. The said word i.e. 'judgment' be accordingly deleted from order dated 19th March, 2019. The order dated 19th March, 2019 is accordingly modified.

6 The applicant has also prayed that the part amount of Rs.6,90,000/- deposited by respondent no.1 and lying in the Registry of Sessions Court, Mumbai may be allowed to be withdrawn unconditionally.

7 In view of the facts mentioned in para no. 5 of the application and the fact that the applicant is suffering from ailment

of kidneys failure, the applicant is permitted to withdraw the said part amount of compensation of Rs.6,90,000/- deposited by respondent no.1 in the Registry of the Sessions Court, Mumbai. The applicant is further directed to file an affidavit-cum-undertaking before this Court and so also before the Sessions Court stating that in the event the respondent no.1 herein succeeds in the Revision Application No. 147 of 2019, the applicant will bring back the said amount withdrawn by him without any demur.

8 Application is allowed in the aforesaid terms.

(A.S. GADKARI, J.)