

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

**CRIMINAL APPLICATION NO. 664 OF 2018
IN
CRIMINAL APPLICATION NO. 497 OF 2018
IN
CRIMINAL REVISION APPLICATION No. 528 OF 2018**

Ganesh Benzoplast Ltd.

...Applicant

Versus

Rajeev Khandelwal & Anr.

...Respondents

Mr.S.M.Gorwadkar, Senior Counsel a/w. Mr. H.H. Nagi I/b. H.H.Nagi & Associates for the Applicant.

Mr.Ashok Mundargi, Senior Counsel a/w. Mr.Prabhakar Jadhav, Mr. Veerdhaval Kakade for Respondent No.1 in APPR No. 664 of 2018.

Mr.A.R.Patil, APP for Respondent No.2-State.

**CORAM : MRS. MRIDULA BHATKAR, J.
DATE : 07 FEBRUARY 2019**

P.C.:

1. A limited prayer is made in this Criminal Application by the applicant/ original complainant, who has succeeded in getting conviction against respondent No.1/accused under section 138 of the Negotiable Instruments Act in C.C. No. 5953/SS/2015 (Old No. 211/S/1997).

2. The conviction of respondent No.1/accused was confirmed by the Sessions Court in Criminal Appeal No. 341 of 2017 on 13th August, 2018.

As per the order dated 12th April, 2017 passed by the learned Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai, respondent No.1/accused was directed to pay an amount of Rs. 9 Crores to the original complainant by way of compensation. The cheque amount in the present case is Rs. 5,50,00,000/-.

3. The learned senior counsel for the applicant/ original complainant submits that this Court while granting bail to respondent No.1 /accused on 10th October, 2018, did not impose any condition in respect of the payment of compensation. He further submits that no notice was given to the complainant. He further submits that the complainant had filed a Summary Suit No. 4431 of 1999, which was decreed on 3rd February, 2003 for Rs. 13,64,83,295/-. In execution proceedings, notice is made absolute with decree for an amount of Rs. 26,41,82,199/-. He further submits that respondent No.1/accused was absconding in the criminal case and the proclamation was also issued against him. Hence, he prays that in view of sections 143 A and 148 of the Negotiable Instruments (Amended) Act, the condition for payment of compensation be imposed on respondent No.1/accused.

4. The learned senior counsel for respondent No.1/accused submits that respondent No.1/accused has deposited Rs. 55,00,000/- at the time of filing appeal. He further submits that the complainant did not file execution proceedings nearly for 12 years and this fact is also to be taken into account and hence, he submits to the orders of this Court.

5. Considered submissions. In view of the provisions made under sections 143 A and 148 of the Negotiable Instruments (Amended) Act, and as a part of the bail order dated 10th October, 2018, I pass the following order :

ORDER

- (i) Respondent No.1/accused is directed to deposit 40% of the cheque amount, which comes to Rs. 2,20,00,000/-, out of which, respondent No.1/accused has deposited Rs.55,00,000/-, which comes to Rs. 1,65,00,000/- in two installments in the trial Court. The first installment of Rs. 1,00,00,000/- shall be deposited on or before 7th March,2019 and the second installment of Rs.65,00,000/- shall be deposited on or before 16th April, 2019 in the trial Court and it is to be considered as a condition of bail;

- (ii) After depositing the amount by respondent No.1/accused, the applicant/ original complainant is allowed to withdraw the said amount;
- (iii) Respondent No.1/accused shall not leave the country without prior permission of this Court.

6. Criminal application is disposed of accordingly.

(MRIDULA BHATKAR, J.)