

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

**CRIMINAL APPLICATION NO. 22 OF 2019
IN
REVISION APPLICATION NO. 333 OF 2016**

Bhalchandra Sopan Gawane ...Applicant
Versus
Subhash Waman Awate And Anr. ...Respondents

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Mr. Arya Sapre i/by Mr. Harshad Bhadbhade, Advocate for the Applicant in Revision and respondent in Criminal Application.

Mr. Viral Babar i/by Mr. Amit Ghag for applicant in Criminal Application.

Mr. S. R. Agarkar, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 4th AUGUST, 2022

PC :

1. This is an application for withdrawal of compensation amount deposited by revision applicant.
2. In accordance with order dated 21.06.2016 passed by this Court, the revision applicant has deposited an amount of Rs. 4,00,000/- and during the pendency of appeal before the Court of Sessions he has deposited an amount of Rs. 1,72,500/-.
3. The revision applicant has been convicted by the Court of learned Magistrate vide judgment and order dated

11.08.2014 for offence punishable under Section 138 of Negotiable Instruments Act and sentenced to undergo simple imprisonment of three months and directed to pay fine of Rs.5,75,000/-. Appeal preferred by revision applicant has been dismissed vide judgment and order dated 28.04.2016 and the trial Court order has been confirmed. The revision applicant had issued cheque in the sum of Rs. 5,50,000/- on 09.12.2012.

4. Learned advocate for applicant/complainant seeks permission to withdraw the amount deposited by revision applicant/accused. It is submitted that there are two concurrent findings of conviction against the revision applicant. Cheque was issued in the year 2012. The complainant may be permitted to withdraw the said amount.

5. Learned advocate for revision applicant objected for withdrawal of the amount. It is submitted that in the event the revision applicant succeeds in the revision application, it would be difficult to recover the said amount from the complainant. Revision application preferred challenging the judgment of conviction has been admitted by this Court and sentence has been suspended.

6. It is relevant to note that the cheques in question were issued in the year 2012. The accused was subjected to trial and he has been convicted by the trial Court vide judgment and order dated 11.08.2014. Thereafter, the accused preferred appeal before the Court of Sessions which was dismissed on 28.04.2016.

7. The revision applicant has so far deposited an amount of Rs.5,72,500/-. Considering the factual matrix of this case, the complainant can be permitted to withdraw the said amount.

ORDER

- (i) Criminal Application No. 22 of 2019 is allowed.
- (ii) The applicant/complainant is permitted to withdraw the amount of Rs.4,00,000/- deposited by revision applicant in this Court and Rs.1,72,000/- deposited in the Court of Sessions at Greater Bombay with accrued interest, if any on executing an undertaking that, in the event the judgment of the trial Court and the appellate court is reversed, the said amount will be re-deposited in this Court with accrued interest.
- (iii) Criminal Application stands disposed of.

(PRAKASH D. NAIK, J.)