

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

CRIMINAL APPEAL NO. 391 OF 2019

Shaban Gulamali Thanawala	... Appellant
Versus	
Behram Maneck Pardiwalla and Ors.	... Respondents

**WITH
CRIMINAL APPEAL NO. 401 OF 2019
WITH
INTERIM APPLICATION NO. 1392 OF 2022
IN
CRIMINAL APPEAL NO. 401 OF 2019**

**WITH
CRIMINAL APPEAL NO. 581 OF 2019
WITH
CRIMINAL APPEAL NO. 602 OF 2019
WITH
INTERIM APPLICATION NO. 3069 OF 2021
IN
CRIMINAL APPEAL NO. 602 OF 2019**

Mr. Vinod Kashid, for the Appellant in Appeal No. 391 of 2019 and Appeal No. 401 of 2019 and for the Applicant in IA No. 1392 of 2022.

Mr. Aditya Mehta, for the Appellant in Appeal No. 581 of 2019 and Respondent No.1 in Appeal No. 391 of 2019.

Mrs. Nasreen Ayubi, for the Appellant in Appeal No. 602 of 2019 (Appointed by Legal-Aid) and Respondent No.2 in Appeal No. 391 of 2019.

Mrs. P. P. Shinde, APP for the Respondent – State.

**CORAM : REVATI MOHITE DERE &
V. G. BISHT, JJ.**

DATE : 14th JULY 2022

P. C. :

By this Appeal, the appellant (original complainant) has impugned the order dated 18th February, 2019 passed by the learned Additional Sessions Judge, City Civil Court, Gr. Mumbai.

2 From a perusal of the impugned order dated 18th February, 2019, it appears that the application filed by the appellant (Exh. 170) in Sessions Case No. 483 of 2016 was withdrawn by the appellant before the trial Court. The said application seeking withdrawal is on page 378 of the Appeal. Pursuant to the said withdrawal, the learned Judge passed the order on 18th February, 2019, which is impugned before us. The operative part of the said order is reproduced hereunder:

- “1. Bank account of Executor of Estate of late Ramzan Gulamali Thanawala bearing Account No. 67318380665 and Account No. 67320438534 both in State Bank of Travancore, Fort Branch, Mumbai are hereby de-freezed. The entire money that was transferred for creation of 10 FD's of Rs.99 Lacs each and one FD was Rs.77 Lacs be

broken and all the amounts accrued alongwith the interest be transferred to the account of informant Shaban Gulamali Thanawala bearing S/B account No. 3437391734 in Central Bank of India, Tardeo Branch, Mumbai. Further Shaban Gulamali Thanawala is directed to execute the bond for the consolidated amount in both the accounts. He is further directed to produce the property as directed by the Civil or Criminal Appellate Court.

2. Bank Account of accused No.1 Behram Pardiwala bearing S/B Account No. 1000657694 in Central Bank of India, Wadala Branch is hereby de-freezed. The said accused is permitted to operate and withdraw the amount from this account.
3. Bank account belonging to accused no.2 Minu Patel bearing Account No.03240100008287 in Bank of Baroda, Ahmedabad Branch and Account No.203010100005152 in Bank of India, Khanpur, Ahmedabad Branch are hereby de-freezed. The said accused is permitted to operate and withdraw the amount from both the accounts.”

3 It appears that whilst passing the impugned order, in para 2 and 7, on page Nos. 79 and 80, the learned Judge had noted the appellants concession. Today, the learned Counsel for the appellant submits that no such concession was granted by the appellant and

hence it would be opposite to reproduce the said paras from the Impugned Order. The said paras read thus;

“ Para 2 – On the next day of delivering the judgment that is on 16.02.2019 Advocate Vinod Kashish for informant preferred an application filed by him at Exh. 170 and submitted that the amount in the freezed account of both the accused be given to them and he has no objection if it is withdrawn by them. At his time due to the information given to both the accused, they were present in the court along with Advocate Pawar. But as the matter was already adjourned for today no orders were passed by the Court.”

Para 7- As informant has not objected to the defreezing of the bank account seized during investigation of both the accused. They are accordingly de-freezed. Due to this no compensation is being granted to the informant. Accordingly, I pass the following order.

ORDER

- “1. Bank account of Executor of Estate of late Ramzan Gulamali Thanawala bearing Account No. 67318380665 and Account No. 7320438534 both in State Bank of Travancore, Fort Branch, Mumbai are hereby de-freezed. The entire money that was transferred for creation of 10 FD's of Rs.99 Lacs each and one FD was Rs.77 Lacs be broken and all the amounts accrued alongwith the interest be

transferred to the account of informant Shaban Gulamali Thanawala bearing S/B account No. 3437391734 in Central Bank of India, Tardeo Branch, Mumbai. Further Shaban Gulamali Thanawala is directed to execute the bond for the consolidated amount in both the accounts. He is further directed to produce the property as directed by the Civil or Criminal Appellate Court.

2. Bank Account of accused No.1 Behram Pardiwala bearing S/B Account No. 1000657694 in Central Bank of India, Wadala Branch is hereby de-frozen. The said accused is permitted to operate and withdraw the amount from this account.
3. Bank account belonging to accused no.2 Minu Patel bearing Account No.03240100008287 in Bank of Baroda, Ahmedabad Branch and Account No.203010100005152 in Bank of India, Khanpur, Ahmedabad Branch are hereby de-frozen. The said accused is permitted to operate and withdraw the amount from both the accounts.”

4 It is a matter of record that after the said Order dated 18/02/2019 was passed, the appellant did not file any application seeking modification/withdrawal of the concession before the learned Additional Sessions Judge.

5 When the same was pointed out to the learned Counsel and as rightly submitted by the learned Counsel for the respondent, the

learned Counsel for the appellant submitted that he will not press this Appeal and instead will file an appropriate application before the trial Court, for recalling of the order dated 18th February, 2019.

6 It is always open for the appellant to file an application in accordance with law and no such liberty is required. However, we We make it clear that we have not gone into the merits of the order impugned in this appeal, having regard to what is observed hereinabove.

7 Accordingly, the Appeal is disposed of as not pressed.

8 All contentions of the parties are kept open.

9 All parties to act on the authenticated copy of this order.

V. G. BISHT, J.

REVATI MOHITE DERE, J.

REKHA
PRAKASH
PATIL

Digitally signed by
REKHA PRAKASH
PATIL
Date: 2022.07.18
15:51:40 +0530

Rekha Patil

6/6