

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 438 OF 2013

Mr.Zoher Sailawala

S/o. Taherali Shaikh Sailawala

...Applicant

(Orig. Accused)

Vs.

1. The State of Maharashtra
& Anr.

... Respondents

WITH

INTERIM APPLICATION NO. 274 OF 2022

IN

CRIMINAL REVISION APPLICATION NO. 438 OF 2013

Mr.Mahendra Tulsidas Bhuta

...Applicant

(Orig. Respondent No.2)

Vs.

1. The State of Maharashtra
& Anr.

... Respondents

(Orig. Applicant)

Mr.Imtiyaz I. Patel for applicant.

Mr.A.R. Patil, APP for respondent No.1-State.

Mr.Zoher Tahirali Shaikh Sailawala-respondent No.2 present in-person.

CORAM : N. J. JAMADAR, J.

DATE : 4th MAY, 2022

P.C.:

INTERIM APPLICATION NO. 274 OF 2022

1. Heard the learned counsel for the applicant and Mr. Zoher Sailawala, the respondent No.2 in-person-revision applicant/accused.

2. The original respondent No.2-complainant has preferred this

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application seeking permission to withdraw the amount of Rs.1,00,000/- deposited by the revision applicant-accused, pursuant to the judgment and order dated 28th February 2012, passed by the learned Metropolitan Magistrate, 21st Court, Bandra, Mumbai in C.C. No.4808/SS/2008, whereby the accused came to be convicted for the offence punishable under section 138 of the Negotiable Instruments Act, 1881 and sentenced to suffer simple imprisonment for a period of one month. The learned Magistrate further directed the accused to pay compensation of Rs.4,50,000/- to the complainant and, in default, the accused to suffer further simple imprisonment for a period of one month.

3. The appeal preferred by the revision applicant/accused being Criminal Appeal No. 213 of 2012 came to be dismissed by order, dated 17th September 2013.

4. Pursuant to the order dated 5th October 2015 passed by this Court, the revision applicant/accused has deposited a sum of Rs.1,00,000/- before the learned Magistrate, 21st Court, Bandra, Mumbai on 2nd January 2016.

5. On the previous date, the revision applicant was present in-person and sought time as his counsel was not available. Today also, the applicant seeks further time on the same ground.

6. Since the learned Magistrate had passed the order to pay compensation on 28th February 2012, in a complaint which was filed in the year 2008, there is no justifiable reason to deprive the complainant from realising part of the amount of compensation ordered to be paid by the learned Magistrate.

7. Hence, the application stands allowed.

8. The amount of Rs.1,00,000/- deposited by the revision applicant/accused before the learned Metropolitan Magistrate, 21st Court, Bandra, Mumbai be permitted to be withdrawn by the original complainant-respondent No.2, subject to furnishing an undertaking that the original complainant-respondent No.2 shall bring back the said amount, in the event, the revision application is decided against the original complainant/respondent No.2 and it is held that the original complainant/respondent No.2 is not entitled to get the compensation. Such an undertaking be furnished before the learned Metropolitan Magistrate, 21st Court, Bandra , Mumbai, within a period of three weeks.

9. The Interim Application stands disposed.

(N. J. JAMADAR, J.)