

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL INTERIM APPLICATION NO.4060 OF 2022
IN
CRIMINAL REVISION APPLICATION NO.549 OF 2017**

Iswarbhai Shivilal Shah

...Applicant

Versus

Vitthal Champalal Nabariya & Anr

...Respondents

Mr. Bhushan U. Deshmukh a/w Vedant Bende, Advocate for Applicant in IA/4060/2022.

Mr. Sachin D. Kadam, Advocate for Respondent No.1 in IA/4060/2022 & original Applicant in REVN/549/2017.

Mr. S.H. Yadav, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 3rd OCTOBER 2023

PC :

1. The Applicant is the original Complainant in S.C.C. No.325/2009, before the 2nd Jt. Judicial Magistrate First Class, Niphad. The said case was for dishonour of cheque of Rs.5,00,000/-. At the conclusion of the trial, the Respondent No.1 (the original Accused) was convicted for commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881. He was sentenced to suffer simple imprisonment for one month and to pay compensation to the

Applicant to the tune of Rs.5 lakhs. This judgment and order was passed by the trial Court on 16th July 2012. The Respondent No.1 preferred Criminal Appeal No.32/2012 before the Sessions Court at Niphad, District Nashik. This Appeal was partly allowed. The sentence of one month of simple imprisonment was set aside but the compensation with interest payable to the Applicant was maintained. It is the case of the Applicant that, the Respondent No.1 had deposited Rs.1,00,000/- before the Sessions Court, Niphad and Rs.1,50,000/- before the J.M.F.C., Niphad. The prayer in the present Application is for withdrawal of those amounts deposited in those two Courts.

2. Learned Counsel for the Respondent No.1 i.e., the original Accused has preferred Criminal Revision Application No.549/2017 before this Court, which is already admitted and is pending for final disposal. Learned Counsel for the original Accused-Respondent No.1 herein submitted that, the Respondent No.1 in this Interim Application, has no objection for such withdrawal provided the Applicant executes an undertaking that such withdrawal would be subject to the final outcome of the

Revision Application.

3. Hence, the following order:

ORDER

- i) The Applicant is permitted to withdraw Rs.1,00,000/- which was deposited in the Court of Sessions at Niphad and Rs.1,50,000/- which was deposited by the Respondent No.1 before the J.M.F.C., Niphad on his executing an undertaking in the form of an affidavit that such withdrawal would be subject to the final outcome of the Criminal Revision Application No.549/2017.
- ii) The Interim Application is disposed of accordingly.

(SARANG V. KOTWAL, J.)