

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.91 OF 2024

Shri Mahakali Enterprises & Anr. ...Applicants
vs.
The State of Maharashtra & Anr. ...Respondents

Mr. Prakash Solaskar i/b. Mr. Sarthak Solaskar, Advocate for the Applicants.
Mr. H.J. Dedhia, APP for Respondent – State.
Mr. Aniket Gawand, Advocate for Respondent No.2.
Mr. Swapnil Gaurav, Respondent No.2 present in person.

CORAM : S. M. MODAK, J.
DATE : 16th FEBRUARY 2024

P. C. :-

1. Heard learned Advocate for the Applicants – Convicted Accused and learned Advocate for the Respondent – complainant.
2. Applicant No.2 was convicted by the Court of Metropolitan Magistrate, Dadar on 20th April 2023 for the offence punishable under Section 138 of the Negotiable Instruments Act. The sentence is as under :-

- (a) S.I. for one year and
- (b) Compensation of Rs.26,75,000/-. It was to be paid

within three months from the date of judgment.

3. Accused No.1 is a Proprietary Firm of which Accused No.2 is a Proprietor.
4. After conviction he filed an application for suspension of sentence. His sentence was suspended as per the order dated 21st October 2023 passed in Criminal Misc. Application No.1076 of 2023. The Appellate Court while suspending the sentence has directed the Appellants to deposit 30% of the amount of compensation within one month from the date of the order.
5. The legality of the said order is challenged by way of revision. According to the Applicant, 30% of the compensation amount comes to Rs.8,02,500/- and the medical ailment of the Applicant is quoted as a reason for reduction. Along with this Revision, the documents showing the medical ailment are annexed. The Applicant is suffering from elephantiasis. So also the photograph showing swelling on his lower limbs is also annexed. It is also contended that due to such medical condition the Applicant is unable to move out of the house.
6. There is a strong opposition for reduction of the quantum on behalf of the complainant. It is opposed on the ground that there are

also other cases pending and he is habitual offender. It is further contended that the Applicant runs a catering business and there are members in the family to look after the business. The prayer is opposed also for the reason that all these documents were not annexed to the criminal miscellaneous application filed before Appellate Court.

7. By way of reply, it is submitted that though there is no mention about elephantiasis in application for suspension of sentence but it is mentioned in Criminal Miscellaneous Application for bail filed before Sessions Court. He also read over the relevant averments.

8. When I have read the impugned order, I do not find anywhere that the Applicant made submission for imposing less amount on account of medical ailment and that is why, the learned Judge has not considered it. However, from the medical papers annexed, one can find that he is suffering from elephantiasis. The photo also shows his medical condition. There is no challenge to genuineness of these documents.

9. As contemplated under Section 148 of the Negotiable Instruments Act, 1881 while suspending the sentence, the Appellate Court can impose interim compensation to the extent of 20% of the

amount of compensation. Learned Advocate for the Applicants assures that his client will deposit the amount within four weeks and even he is consenting for withdrawal of the said amount by the complainant – Respondent. So, I deem it proper to pass the following order:-

ORDER

- (a) Revision is allowed.
- (b) Instead of 30% of Rs.26,75,000/-, the Applicant is directed to pay 20% of the said amount which comes to Rs.5,35,000/- (Rupees Five Lakhs Thirty Five Thousand Only) to the Respondent – Complainant by transferring the amount to his bank account within four weeks from today.
- (c) Let Respondent – Complainant to give the bank details to the Applicant or his counsel within one week from today.
- (d) Rest of the conditions mentioned in the impugned order will remain as it is.
- (e) Application is disposed of.

[S. M. MODAK, J.]