

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.643 OF 2024
IN
CRIMINAL APPLICATION NO.1313 OF 2023
WITH
INTERIM APPLICATION NO.659 OF 2024
IN
CRIMINAL APPLICATION NO.1314 OF 2023
WITH
INTERIM APPLICATION NO.650 OF 2024
IN
CRIMINAL APPLICATION NO.1322 OF 2023
WITH
INTERIM APPLICATION NO.653 OF 2024
IN
CRIMINAL APPLICATION NO.1316 OF 2023
WITH
INTERIM APPLICATION NO.651 OF 2024
IN
CRIMINAL APPLICATION NO.1311 OF 2023
WITH
INTERIM APPLICATION NO.649 OF 2024
IN
CRIMINAL APPLICATION NO.1312 OF 2023
WITH
INTERIM APPLICATION NO.648 OF 2024
IN
CRIMINAL APPLICATION NO.1319 OF 2023
WITH
INTERIM APPLICATION NO.646 OF 2024
IN
CRIMINAL APPLICATION NO.1321 OF 2023
WITH
INTERIM APPLICATION NO.645 OF 2024
IN
CRIMINAL APPLICATION NO.1320 OF 2023
WITH
INTERIM APPLICATION NO.652 OF 2024
IN
CRIMINAL APPLICATION NO.1318 OF 2023
WITH
INTERIM APPLICATION NO.654 OF 2024

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**IN
CRIMINAL APPLICATION NO.1317 OF 2023
WITH
INTERIM APPLICATION NO.644 OF 2024
IN
CRIMINAL APPLICATION NO.1315 OF 2023**

Shree Siddhivinayak Developers and Anr. ...Applicants

vs.

M/s. Kimaya Wellness Limited and Anr. ...Respondents

Ms. Mallika Ingale, for the Applicants.

Ms. Kausar Banatwala a/w. Ms. N.N. Thakkar and Mr. Vandit Joshi
i/b. Tushar Goradia, for Respondent No. 1.

Mr. S.R. Agarkar, APP, for the Respondent No. 2./State.

CORAM : N. J. JAMADAR, J.

DATE : APRIL 01, 2024

P.C.:

1. Mentioned out of turn.
2. Heard the learned counsel for the parties.
3. These applications are preferred seeking modification in the orders dated 8th November, 2023 passed by this Court in Criminal Application Nos. 1313 of 2023, 1314 of 2023, 1322 of 2023, 1316 of 2023, 1311 of 2023, 1312 of 2023, 1319 of 2023, 1321 of 2023, 1320 of 2023, 1318 of 2023, 1317 of 2023 and 1315 of 2023 by reducing the amount to be deposited to Rs. 50,000/- instead of 20% of the compensation.
4. While disposing of the Criminal Application Nos. 1313 of 2023, 1314 of 2023, 1322 of 2023, 1316 of 2023, 1311 of 2023, 1312 of 2023, 1319 of 2023, 1321 of 2023, 1320 of 2023, 1318 of 2023,

1317 of 2023 and 1315 of 2023 this Court had noted that the applicants had filed undertakings in each of the applications in which the applicants had undertaken to deposit 20% of the amount of compensation which came to Rs. 2 lakhs within three months from 8th November, 2023. Out of the said amount of Rs. 50,000/- was to be deposited on or before 30th November, 2023 and balance of Rs. 1,50,000/- was to be deposited within three months from 8th November, 2023. The Court further noted that in paragraph 3 of the said undertaking, it was stipulated that in default of the deposit the said amount of Rs. 2 lakhs within a period of three months, the suspension of sentence be vacated.

5. On the basis of the said undertakings and relying upon the statements made therein on behalf of the applicants, this Court directed that the sentence imposed on the applicants shall stand suspended for a period of three months from the said date and if the amount undertaken to be deposited is not deposited by the applicants, the orders of suspension of sentence will stand vacated by the end of three months from the date of the said order.

6. The learned counsel for the applicants submits that on account of supervening circumstance of the applicant No. 2 Nitin Mehta being diagnosed with prostate cancer, the applicants could not comply with the undertaking to deposit the aforesaid amounts.

The learned counsel also made an endeavour to urge that the aforesaid Criminal Applications were not decided on merits.

7. I am afraid such argument can be countenanced. The Court has recorded that after arguments, the applicant No. 2 had filed an undertaking. On the basis of the said undertaking, the applications came to be disposed. It would be impermissible for the applicants to turn around and urge that the applications were not decided on merits and the same be considered afresh.

8. It is trite that no review of an order is contemplated under the Code of Criminal Procedure. A Miscellaneous Application for modification of the final order not referable to any provision of the Code can not be resorted to as a review in disguise. A profitable reference in this context can be made to the judgment of the Supreme Court in the case of **Hari Singh Mann vs. Harbhajan Singh Bajwa and Others**¹ wherein the Supreme Court observed, inter alia, as under:-

10] Section 362 of the Code mandates that no Court, when it has signed its judgment or final order disposing of a case shall alter or review the same except to correct a clerical or arithmetical error. The Section is based on an acknowledged principle of law that once a matter is finally disposed of by a Court, the said Court in the absence of a specific statutory provision becomes functus officio and disentitled to entertain a fresh prayer for the same relief unless the former order of final disposal is set aside by a court of competent jurisdiction in a manner prescribed by law. The court becomes functus officio the moment the

1 (2011) 1 Supreme Court Cases 169.

official order disposing of a case is signed. Such an order cannot be altered except to the extent of correcting a clerical or arithmetical error. The reliance of the respondent on Talab Haji Hussain's case (supra) is misconceived. Even in that case it was pointed that inherent powers conferred on High Courts under Section 561A (Section 482 of the new Code) has to be exercised sparingly, carefully and with caution and only where such exercise is justified by the tests specifically laid down in the section itself. It is not disputed that the petition filed under Section 482 of the Code had been finally disposed of by the High Court on 7.1.1999. The new Section 362 of the Code which was drafted keeping in view the recommendations of the 41st Report of the Law Commission and the Joint Select Committees appointed for the purpose, has extended the bar of review not only to the judgment but also to the final orders other than the judgment.

9. Resort to the Miscellaneous Applications in disposed of proceedings was also deprecated by the Supreme Court in the case of **State of Uttar Pradesh vs. Brahm Datt Sharma and Another**². The Supreme Court observed as under:-

10] The High Court's order is not sustainable for yet another reason. Respondents' writ petition challenging the order of dismissal had been finally disposed of on 10.8.1984, thereafter nothing remained pending before the High Court. No miscellaneous application could be filed in the writ petition to revive proceedings in respect of subsequent events after two years. If the respondent was aggrieved by the notice dated 29.1.1986 he could have filed a separate petition under Art. 226 of the Constitution challenging the validity of the notice as it provided a separate cause of action to him. The respondent was not entitled to assail validity of the notice before the High Court by means of a miscellaneous application in the writ petition which had already been decided. The High Court had no jurisdiction to entertain the application as no proceedings were pending before it. The High Court

2 (1987) 2 Supreme Court Cases 179.

committed error in entertaining the respondent's application which was founded on a separate cause of action. When proceedings stand terminated by final disposal of writ petition it is not open to the Court to reopen the proceedings by means of a miscellaneous application in respect of a matter which provided a fresh cause of action. If this principle is not followed there would be confusion and chaos and the finality of proceedings would cease to have any meaning.

10. The judgment in the case of **Hari Singh Mann** (supra) was followed by the Supreme Court in the case of **Nazma vs. Javed @ Anjum**³.

11. In view of the aforesaid position in law, since the applications came to be finally disposed by orders dated 8th November, 2023, it would be impermissible to entertain the instant applications for modification of the said orders.

12. Nonetheless having regard to the submissions on behalf of the applicants that applicant No. 2 is suffering from cancer and a sum of Rs. 50,000/- is deposited in each of the applications, by way of final indulgence, time to deposit the balance amount to make up 20% of the amount of compensation in each case, stands extended by two weeks.

Applications disposed.

(N. J. JAMADAR, J.)

3 (2013) 1 Supreme Court Cases 376.