

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

REVISION APPLICATION NO. 625 OF 2015
(SERIAL NO. 09)

Rajaram Ganpat Narvekar ...Applicant

vs.

Sudhir Dewon Sakpal And Anr. ...Respondents

ALONGWITH
CRIMINAL APPLICATION NO. 238 OF 2016
IN
REVISION APPLICATION NO. 625 OF 2015
(SERIAL NO. 10)

Sudhir Dewon Sakpal ...Applicant

vs.

Rajaram Ganpat Narvekar And Anr. ...Respondents

Mr. Mukesh Pabari - Advocate for the Applicant in Revn 625 of 2015
and Respondent in APPR 238 of 2016

Mr. K. K. Malpathak – Advocate for Applicant in APPR 238 of 2016
and Respondent in Revn 625 of 2015

Mr. V. N. Sagare - APP for the Respondent-State

CORAM : S. M. MODAK, J.

DATE : 06th MARCH 2024

P. C. :-

1. Heard learned Advocate for the Complainant and learned Advocate for the Applicant-accused.
2. There is concurrent finding of the fact and the conviction for the

offence punishable under Section 138 of the Negotiable Instruments Act. This application i.e. Criminal Application No. 238 Of 2016 for withdrawal is filed in the year 2016 and surprisingly, it is not decided till today. On account of family and personal need, the Complainant is asking for withdrawal of the amount of Rs. 1,00,000/-. The trial Court imposed fine of Rs. 1,00,000/- and directed the same to be paid to the Complainant. This is confirmed by the Appellate Court.

3. Recently, the Complainant is operated in private hospital. The necessary documents are tendered. The same is taken on record and marked as 'Annexure – X'. Copy is given to the other side. The prayer for withdrawal was strongly opposed on the last date and today also. In fact revision is admitted and whatever contentions are there that can be decided at the time of final hearing.

4. As learned Advocate for the Applicant has taken several grounds for opposing the withdrawal on the last date, I have mentioned in my order directing the Parties to address the Court on the issue of the scope of the revision. The observations in case of the State of Maharashtra Vs. Jagmohan Singh Kuldip Singh Anand and Ors.¹ were brought to my notice. It is on the point limited scope in revisional

1 2004 (7) SCC 659

jurisdiction.

5. Whereas learned advocate for the Applicant invited my attention to para no. 23 wherein the Hon'ble Supreme Court has reproduced the observations in case of Dhulichand Vs. Delhi Administration². I have read the above referred judgment. In fact it is observed "*the High Court cannot embark upon re-appreciation of the evidence*". I failed to understand how these observations are useful to the applicant. That is why I have said that all contentions can be gone into at the time of the final hearing.

6. So I am inclined to allow the application. There is contention on behalf of the Applicant asking the Respondent to furnish the bank guarantee. Whereas the provisions of the Section 148 (3) of the Negotiable instruments Act empowers the Appellate Court to release the amount. The proviso mentions about the repaying the amount alongwith interest as per RBI norms. I think such direction can be sufficient. He can be asked to furnish an undertaking.

7. In view of that following order is passed:-

ORDER

a) The Criminal Application is allowed in terms of prayer clause

2 AIR 1975 SC 1960

‘a’.

- b) The Applicant is permitted to withdraw Rs. 30,000/- deposited before the Appellate Court and Rs. 70,000/- deposited in this Court on following conditions:-
 - (i) to furnish an undertaking to refund the amount alongwith interest as per the RBI norms, if directed by this Court.
- 8. Criminal Application No. 238 of 2016 is disposed of.
- 9. Parties to act upon an authenticated copy of this Order.
- 10. Revision application be listed on 17th April 2024.

[S. M. MODAK, J.]