

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 398 OF 2019
IN
CRIMINAL APPLICATION NO. 302 OF 2015
IN
CRIMINAL REVISION APPLICATION NO. 291 OF 2015

Hafizullah Khan

...Applicant

vs.

The State of Maharashtra and Ors.

...Respondents

Ms. Priyanka Acharya i/by Akshay Pawar - Advocate for the Applicant
in IA 398 of 2019 and for Respondent in CRA 291 of 2015

Mr. Vinod Sharma – Advocate for Applicant in APPR 302 of 2015 and
Revn 291 of 2015.

Mr. H. J. Dedhia – APP for the Respondent-State

CORAM : S. M. MODAK, J.

DATE : 06th FEBRUARY, 2024

P. C. :-

1. Heard learned Advocate for the Respondent-Complainant and learned Advocate for the Applicant-accused.
2. There is concurrent findings of the fact and conviction under Section 138 of the Negotiable Instruments Act. The Court of the Metropolitan Magistrate as per judgment dated 29/06/2013 has

imposed the following sentence :-

- a) Simple imprisonment for three months;
- b) and Fine of Rs. 3,10,000/-.

Out of that Rs. 3,00,000/- to be paid to the Complainant by way of compensation.

3. Then accused filed an appeal and he failed. That is why this revision.

4. This interim application is filed for withdrawal of the amount deposited by accused before the trial Court. The Applicant-accused has given unaffirmed copy of the reply. It is not filed in the Court, as it is not affirmed by his client. On merits, he opposed the prayer for withdrawal. He submitted that he has given reply to the mandatory notice and denied the claim of the Complainant in executing the work fully. Further pleaded that he has got the work done from another contractor.

5. When query is put to him what evidence he has given before the trial Court? Learned Advocate submitted that he has not examined any witnesses. All these issues can be dealt with when revision will be argued.

6. Parties are also given some time to think about the settlement. For some reason or other, it was not possible. Hence revision has to be heard finally. On the point of the request for withdrawal, learned Advocate for the Applicant wants Respondent to give bank guarantee. As against this, the Applicant is ready to give an undertaking that he will refund the amount as and when directed by this Court. I do not think that guarantee can be ordered. It is for simple reason that Applicant-accused has failed before two Courts.

7. If this Court is inclined to allow the prayer, learned Advocate for the Applicant invited my attention to the provision under Section 148 of the Negotiable Instruments Act.

8. Whereas according to learned Advocate for the Respondent, this provision may not be applicable, when there is a revision. It cannot be accepted, because there is no provision in Negotiable Instruments Act for release of the amount if revision is filed. The Court has to consider the purpose while incorporating the Section 148 of the Negotiable Instruments Act. Hence Order :-

ORDER

(i) The interim application is allowed in terms of prayer clause

‘a’.

- (ii) Let the Court of Metropolitan Magistrate to return the amount of Rs. 3,00,000/- to the Complainant on filing necessary application.
- (iii) Let it be verified whether that amount is deposited or not.
- (iv) Let the Complainant to give an undertaking that he will refund the amount if directed by this Court alongwith interest as per rates prescribed by the RBI for the period from the date of the actual withdrawal and till the date of refund, if any, passed by the Court. Copy of this undertaking be also submitted to this Court on the next date.

9. Interim application is disposed of.

10. Revision application be kept on **05th March, 2024** for final hearing.

[S. M. MODAK, J.]