

Ajay

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 514 OF 2024
IN
INTERIM APPLICATION NO. 2285 OF 2023
IN
CRIMINAL REVISION APPLICATION NO. 425 OF 2010**

Vikas Kisanrao More Deceased Through His
Legal Heirs and Anr. .. Applicants

IN THE MATTER BETWEEN

Gopaldas s/o. Jankiram Dahad .. Applicant

Versus

Vikas Kisanrao More and Anr. .. Respondents

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- Ms. Sonali R. Chavan, Advocate i/by Dr. Uday P. Warunjikar for Applicants.
- Ms. Manisha R. Tidke, APP for the State.

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CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 09, 2024.

P.C.:

- 1.** Heard Ms. Chavan, learned Advocate for Applicants and Ms. Tidke, learned APP for the State.
- 2.** Present Interim Application No.514 of 2024 is filed by Applicants who are the legal heirs of the Original Respondent No.1 in Criminal Revision Application No.425 of 2010.
- 3.** Original Respondent No.1 expired on 14.07.2020. Criminal Revision Application No.425 of 2010 came to be dismissed on merits by this Court (Coram: S.C. Dharmadhikari, J.) on 25.03.2013.

4. Applicants in the Interim Application are legal heirs of original Respondent No.1. They have stated that they were completely unaware about passing of the order dated 25.03.2013. Neither the original Respondent No.1 was aware about the said order. Respondent No.1 expired in July, 2020. His legal heirs who are Applicants before have approached the Court. Admittedly they made a belated Application, but it deserved consideration for the reasons stated therein and also the fact that in the 2013 disposal order, a direction was given to return the monies deposited to Respondent No.1. What is significant is the fact that Original Revision Applicant (Accused) was directed by the Court by order dated 20.10.2011 to deposit the amount of Rs.1 lakh in this Court. This amount was in respect of the entire cheque amount which was directed to be deposited in the Court. Order of dismissal of Criminal Revision Application categorically states that on deposit, the entire amount be paid over with accrued interest to the Complainant (i.e. the Original Respondent No.1).

5. Complainant (Respondent No.1) in the Criminal Revision Application incidentally is the predecessor-in-title of the Applicants before me. Admittedly, he expired in July 2020. Criminal Revision Application came to be dismissed by order dated 25.03.2013. This Court while dismissing the Criminal Revision Application on merits held that there was no perversity established in the twin concurrent orders passed by the learned Trial Court and the learned Appellate

Court and therefore the Criminal Revision Application failed and was dismissed. However, this Court gave a further finding that Revision Applicant was now an Advocate at the bar and therefore he prayed for leniency and in that view of the matter, this Court modified the sentence for which the conviction was granted in order to give an opportunity to the Revision Applicant to compound the offence. However, this was with a caveat that the entire amount of the cheque be deposited and on such deposit the said amount be paid over with accrued interest to the Complainant. Undoubtedly therefore, this amount which was deposited belonged to the Complainant i.e. Original Respondent No.2 and was supposed to be returned to him.

6. Death certificate of the Complainant appended at Exhibit “B” - page No.20 of the Interim Application shows that Complainant expired on 14.07.2020. He did not file any application for withdrawal of his own monies. Admittedly, there is a delay in filing the Application for withdrawal by his legal heirs after his demise. In the larger interest of justice this Court while passing the order dated 28.06.2013 directed that on deposit, the entire amount be paid over with accrued interest to the Complainant. When such a direction is given by the Court, undoubtedly it is the duty of the Registry / Department to ensure that once the amount is deposited in this Court, Complainant is put to notice or the Registry takes a proactive step, but unfortunately this is not the practice which is followed in this Court. Time and again I have

observed that litigants are required to file Applications for seeking withdrawal of their own monies to which they are entitled to and approach Advocates and incur costs.

7. Be that as it may, I can not allow any litigant in such a case namely the legal heirs of the Original Complainant (Respondent No.2) to suffer any longer. There is no reason to do so because the order dated 25.03.2013 is explicitly clear. Even though there is delay for the Applicants to approach the Court after the death of Complainant, the delay deserves to be condoned.

8. Once the said order states that the entire amount has to be paid alongwith accrued interest to the Complainant, then he is entitled to the same. Today, the factual position is that the Original Complainant expired on 14.07.2020. Application which has been filed for bringing his legal heirs on record was filed in the year 2023. Applicants (legal heirs) are entitled to the benefit of limitation in this case which was granted by the Supreme Court while passing order in *Suo Moto* Petition No.3 of 2020 and giving the benefit of arresting the period of limitation in approaching the Court of law during the COVID pandemic from 15.03.2020 to 28.02.2022. In that view of the matter, the actual delay would be much less, rather negligible delay of a few months to file the Interim Application for bringing the legal heirs of Complainant on record.

9. It is seen that this Court has passed an order dated 28.06.2023 dismissing that Interim Application only on the ground that the Revision Application was disposed of in the year 2013 and there is a delay of 10 years in approaching the Court for bringing the legal heirs on record. Delay cannot be of 10 years as Complainant expired only in 2020. In the facts of the present case, though Criminal Revision Application was dismissed in the year 2013 the Original Revision that Application was not filed by the Complainant. He was the Respondent therein and a recipient of the monies. On the contrary, order of dismissal of Criminal Revision Application gives benefit to the Complainant when it records that once the deposit is made, the said amount has to be paid over to the Complainant. It can always be argued as to what steps were taken by the Registry of this Court to implement that order and inform the Complainant. Therefore I find that complete and substantive justice will have to be done in this case.

10. In that view of the matter, Interim Application for correction of the order needs to be allowed solely in the interest of justice. One of the reasons which compels me to pass this order and not relegate the matter to the same Court which has passed the previous order dated 28.06.2023 is solely because in the said order of dismissal of the previous Interim Application, no reasons have been given by the Court which have been delineated by me herein above in this order. If the Court would have been apprised of the reasons, the order would

undoubtedly have been different.

11. Courts are required to do complete justice to the litigants. In the present case it would be a travesty of justice if the amount which has been categorically directed to be returned back to the Original Complainant (Respondent No.2) is retained by this Court in this fashion and the request made by his legal heirs is denied and rejected. That can be never be allowed to happen.

12. In view of my above observations and findings, an arguable case is made out by Ms. Chavan for allowing the Interim Application on the basis of the order passed by this Court and I see no reason as to why the present Application should not be allowed.

13. Interim Application No.514 of 2024 therefore stands allowed in terms of prayer clause 'a' in the interest of justice which reads thus:-

“a) This Honourable Court be pleased to allow the Application by permitting the Applicants to bring on record their names as the legal heirs of the deceased Vikas More, being the Respondent No.1 in the above referred Criminal Revision Application for the reasons mentioned in the present application.”

14. Rather than modifying the order dated 25.03.2013, this is a fit case where Interim Application No.2285 of 2023 deserves to be allowed including Interim Application for seeking condonation of delay in filing the same.

15. In view of the above, order dated 28.06.2023 stands modified to that extent. Interim Application No.2285 of 2023 therefore stands allowed.

16. Legal heirs of the deceased Original Complainant are permitted to be brought on record of Criminal Revision Application No.425 of 2010. Registry / Department to permit the legal heirs of Original Complainant to amend the Criminal Revision Application within a period of two weeks from today. Re-verification stands dispensed with. Registry /Department shall cooperate for allowing the Revision Applicants to carry out the amendment considering that earlier Criminal Revision Application may have been disposed long back in the year 2013. If that is the case, the Revision Applicant is directed to reconstruct the said Application and see that the amended Revision Application is filed in the Registry and the Registry shall accept the same. The delay for bringing the legal heirs on record of the disposed of Application, in the above facts, stands condoned.

17. Needless to state that order dated 25.03.2013 needs to be implemented in letter and spirit. Paragraph No.8 of the order dated 25.03.2013 clearly directs that on deposit, the entire amount with accrued interest be paid over to the Complainant. Sadly today the Complainant is not there to see the fructification of the order since he expired in July 2020. In that view of the matter, legal heirs of the

Original Complainant who are the Applicants before me and have been brought on record shall be entitled to the said amount. They are directed to provide the necessary details to the Registry for withdrawal.

18. In the present Interim Application, Applicant No.1(a) is the wife and Applicant Nos.1(b) and 1(c) are the daughter and son of the deceased Original Complainant (Respondent No.2). If Applicant Nos.1(b) and 1(c) give their consent to Applicant No.1(a) to receive the entire amount, then Applicant No.1(a) is permitted to file appropriate Application for withdrawal of the said amount alongwith all accrued interest. Registry is directed to accept the said Application and implement this order so that no further delay shall happen.

19. Once Application is made, Registry is directed to act on a server copy of this order and transfer the said amount within a period of one week from the date of Application to Applicant No.1(a) i.e. the wife and legal heir of Original Complainant. The entire amount of deposit alongwith all accrued interest shall be transferred.

20. With the above directions, orders for withdrawal of the deposited amount in Criminal Revision Application No.425 of 2010 are passed.

21. Liberty to apply.

22. With the above directions, Interim Application No.514 of 2024 therefore stands allowed and disposed. Interim Application No.2285 of 2023 is taken up for hearing today and is also allowed and disposed of in the above terms.

[MILIND N. JADHAV, J.]

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