

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL REVISION APPLICATION NO. 9 OF 2015

RAMNATH MAHALSEKAR

... Petitioner

Versus

SANJAY KUMAR BAGLA

... Respondent

Shri Sudesh Walawaikar, Advocate for the Petitioner.

Shri Ajit R. Kantak, Advocate for the Respondent.

CORAM:- C. V. BHADANG, J.

DATE : 6th AUGUST, 2015

P.C:

By this revision application, the petitioner is challenging his conviction and sentence under Section 138 of the Negotiable Instruments Act. The petitioner has been sentenced to simple imprisonment for a period of one year, and to pay a compensation of Rs.13,00,000/- and in default, to undergo simple imprisonment for a further period of six months. The said conviction and sentence has been confirmed by the learned Sessions Judge in appeal.

2. The petitioner has filed Criminal Miscellaneous Application No. 31/2015, *inter alia* for permission to compound the offence by following the directives issued by the Hon'ble Supreme Court, in the case of **Damodar S. Prabhu Vs. Sayed Babalal H.**, reported in **(2010) 5 SCC 663**. Although, the respondent had initially opposed the application, by filing a reply dated 13.02.2015, it appears, subsequent to that, the petitioner has deposited a total amount of Rs.13,00,000/-, before this Court towards compensation which is payable to the respondent. The petitioner has also deposited an amount of Rs.1,00,000/- with the State Legal Services Authority, in terms of the decision of the Hon'ble Supreme Court, in the case of **Damodar S. Prabhu** (supra). In that view of the matter, Shri Kantak, the learned Counsel appearing for the respondent, on instructions, submits that the respondent has no objection for compounding the offence, subject to the rival contentions being kept open in the civil suit pending between the parties.

3. It is submitted on behalf of the petitioner that the compensatory aspect has to take precedence in the matter of sentencing under Section 138 of the Negotiable Instruments Act.

4. On hearing the learned Counsel for the parties and in view of the consent on behalf of the respondent, for compounding the offence and further, having regard to the fact that the petitioner has deposited the amount of compensation of Rs.13,00,000/- and also that the petitioner has deposited an additional sum of Rs.1,00,000/- with State Legal Services Authority, permission is granted for compounding the offence.

5. In such circumstances, the following order is passed:

(a) Criminal Miscellaneous Application No. 31/2015 is allowed.

(b) The complaint filed by the respondent stands dismissed.

(c) The impugned judgment and order of conviction and sentence dated 17.01.2014, passed by the learned Magistrate in Criminal Case No. 181/OA/NI/2012/C, which has been confirmed by the learned Additional Sessions Judge by judgment and order dated 26.11.2014, in Criminal Appeal No. 15/2014, are hereby set aside.

(d) The petitioner is acquitted of the offence punishable under Section 138 of the Negotiable Instruments Act.

(e) The Bail Bonds of the petitioner stand cancelled.

(f) It is made clear that this order shall not affect the rival contention of the parties before the Civil Court, which are expressly kept open.

(g) The revision application stands disposed of in the aforesaid terms.

C. V. BHADANG, J.

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