

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL APPLICATION (MAIN) NO. 98 OF 2015**

Kashinath Balu Gaonkar,
son of Balu Gaonkar,
52 years, self employed,
Karapur Tisk, Sankhali, Goa.

... Appellant

Versus

1. Sunita Krishnajirao Dessai,
w/o Krishnajirao Dessai,
major in age, service,
resident of Desainagar,
Sankhali, Goa.

2. State of Goa,
through Public Prosecutor,
High Court, Altinho,
Panaji, Goa.

... Respondents

Ms. Vidhati S. Shetye, Advocate for the Appellant.

Shri Ashwin D. Bhobe, Advocate for the Respondent No. 1.

CORAM:- C. V. BHADANG, J.

DATE:- 18th APRIL, 2015

ORAL JUDGMENT:

Admit. Shri Bhobe, learned Counsel waives service for respondent no. 1. Heard finally by consent of the parties.

2. Heard Ms. Shetye, learned Counsel for the appellant and Shri Bhobe, learned Counsel for the respondent no. 1.

3. The respondent no. 1 had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (N.I. Act, for short), before the learned Judicial Magistrate First Class, Panaji in Criminal Case No. 800/OA/2007/A. By judgment and order dated 15.03.2014, the appellant was convicted for the said offence and has been sentenced to undergo imprisonment for six months and to pay Rs.40,000/- within two months and in default to undergo imprisonment for three months.

4. The Criminal Appeal No. 34/2014, filed by the appellant against the said judgment, has been dismissed on 29.01.2015. The appellant further challenged the same before this Court in Criminal Revision Application No. 14/2015. By judgment and order dated 13.02.2015, this Court has dismissed the same. The appellant is undergoing the sentence.

5. The petitioner has now filed the present criminal application, under Section 482 of the Code of Criminal Procedure, for permission to compound the offence and consequent quashing of the conviction and sentence. The parties have settled the matter and the appellant has agreed to pay Rs.70,000/- to the respondent no. 1 by a Demand Draft.

6. The respondent no. 1 is present before the Court and she is identified by Advocate Shri Bhobe. She admits the factum of settlement.

7. The learned Counsel for the appellant has placed reliance on a decision of this Court in Criminal Application (Main) No. 247/2008, Shri Satish Vaman Madkaikar Vs. Shri Xavier D'Sozua and Another, dated 07.10.2008, in which this Court after placing reliance on the judgment of the Hon'ble Gujarat High Court, in Kirpalsingh Pratapsingh Vs. Balvinder Kaur Hardipsingh Lobana and Another, reported in 2004 Criminal Law Journal 3786, had granted permission for compounding in similar circumstances, namely after the judgment of conviction and sentence was

confirmed by this Court.

8. I have heard the learned Counsel for the parties and perused record. This Court in Criminal Application (Main) No. 247/2008 has *inter alia* held that compounding of the offence can be permitted in the interest of justice, even after the conviction and sentence is confirmed by this Court.

9. The appellant has deposited an amount of Rs.3,375/- in Goa State Legal Services Authority, in view of the decision of the Hon'ble Supreme Court in the case of Damodar S. Prabhu Vs. Sayed Babalal H., reported in (2010) 5 SCC 663.

10. In the circumstances, the following order is passed:

(a) The criminal application is allowed.

(b) The parties are permitted to compound the offence.

(c) The impugned conviction and sentence is set aside on account of the offence being permitted to be compounded.

(d) The complaint filed by the respondent no. 1 stands dismissed.

(e) The appellant is acquitted of the offence punishable under Section 138 of the N.I. Act.

(f) The appellant be set at liberty, forthwith, if not required in connection with any other case.

(g) The criminal application is disposed in the aforesaid terms.

C. V. BHADANG, J.

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