

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

CRIMINAL REVISION APPLICATION NO.8 OF 2015

Shri Vijay Shripati Patil

...Applicant

Versus

Shri Bapuso Daulu Varkat & Anr.

...Respondents

.....

Mr. Anand S. Patil for the Applicant.

Mr. Kedar P. Lad for Respondent No.1

Ms R.V. Newton, APP for Respondent No.2 - State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : 10th SEPTEMBER, 2015.

P. C. :

The Applicant herein was the accused in S.C.C. No.372 of 2008 filed before Judicial Magistrate, First Class, Kolhapur, under section 138 of the Negotiable Instruments Act. The case of the Respondent No.1-complainant was that he had given a sum of Rs.2 lakhs as a hand loan to the Applicant-accused for construction of his house. The Applicant-accused therefore, issued cheque of Rs.1,00,000/- towards part payment of the said amount to Respondent No.1. Said cheque was dishonoured. Statutory notice was issued and since the cheque amount was not paid, the Respondent No.1 initiated proceedings under section 138 of the Negotiable Instruments Act.

2. The Applicant-accused came to be tried and on considering the evidence on record, the learned Magistrate vide judgment dated 26th May, 2010 held the Applicant-accused guilty of the offence punishable under section 138 of the Negotiable Instruments Act and sentenced him to undergo rigorous imprisonment for two months and also to pay Rs.1,00,000/- to the complainant as a compensation.

3. The Said order was challenged in Criminal Appeal No.156 of 2010 and learned Additional Sessions Judge, Kolhapur, dismissed the said appeal vide judgment dated 6th August, 2014. Being aggrieved by the said judgment the Applicant-accused has filed the present revision application.

4. During the pendency of this revision application both the parties have settled the dispute amicably and have filed the consent terms as under :-

“2. They state that they both were good friends before the filing of present case. Due to some misunderstanding the present case U/s. 138 of NI Act was filed by the complainant. Now they both have decided to settle their dispute amicably & maintain their relations as before.

3) Pursuant to that settlement it is agreed between

them that the complainant i.e. Respondent No.1 herein will withdraw the complaint filed U/s. 138 of NI Act numbered as Summary Criminal Case No.372/2008 filed in the court of Ld. JMFC Kolhapur & will withdraw the allegations therein.

4) On the other hand the present Applicant i.e. Ori. Accused will give unconditional consent to withdraw the amount of Rs.1,00,000/- (Rs.One Lakh) deposited by him in the Ld. District Court, Kolhapur. He will be no any objection for withdrawal of such amount. He is ready to co-operate the Respondent No.1 herein for such withdrawal.

5) That both the parties herein have agreed that henceforth there will be no any dispute pending and/or nobody will raise any dispute relating to the present subject matter in future.”

5. The Applicant-accused as well as Respondent No.1-complainant are present before the Court. Said consent terms are signed by the Applicant-accused and Respondent No.1-complainant and by their respective counsel. They have confirmed the contents of the consent terms dated 10th September, 2015 and have stated that the same are agreeable to them. The consent terms are taken on record and marked 'X' for identification.

6. In view of the settlement arrived between the parties, leave is granted to compound the offence. Accordingly, the offence punishable under section 138 of the Negotiable Instruments Act stands compounded and conviction and sentence imposed vide judgment dated 26th May, 2010 passed in S.C.C. No.372 of 2008 as well as the judgment dated 6th August, 2014 passed in Criminal Appeal No.156 of 2010 are hereby quashed and set aside. The Applicant-accused is acquitted of the offence punishable under section 138 of the Negotiable Instruments Act. Bail bonds stand discharged.

7. Respondent No.1-complainant is allowed to withdraw the amount of Rs.1,00,000/- deposited by the Applicant-accused in the Court of Sessions, Kolhapur, on filing appropriate application and on establishing his identity.

8. The Applicant-accused has submitted that he has suffered severe loss in the business and due to his financial difficulties, he is unable to pay 15% cost to the legal service authority as per the order of the Apex Court in the case of **Damodar S. Prabhu Vs. Sayed Babalal H. (2010) 5 SCC 663**. He has prayed that a lenient view can be taken as regards the payment of cost.

9. Having considered the statement made by the Applicant-accused, the Applicant-accused is directed to pay costs equivalent to 10% of the cheque amount to the Maharashtra State Legal Services Authority, within a period of three weeks from the date of this order.
10. Criminal revision application stands disposed of.

(ANUJA PRABHUDESSAI, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed
Judgment /order.