

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

**CRIMINAL REVISION APPLICATION NO. 2 OF 2013
IN
CRIMINAL APPEAL NO. 309 OF 2011**

Sanjay Kamla Singh .. Applicant

v/s.

State of Maharashtra & Anr. ..Respondents

Mr. Deepak Kushwaha i/b Vishal Ingawale for the applicant
Mr. S.A. Waradkar for respondent no.2
Mrs. R.V. Newton, APP for respondent State

**CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED: 4th SEPTEMBER, 2015.**

P.C.

1. The applicant herein was the accused in Sessions Case No.5401/SS/2008, filed before the learned Metropolitan Magistrate, 44th Court, Andheri, Mumbai under Section 138 of the N.I. Act. The case of the respondent no.2 complainant was that the accused had issued cheque dated 24.07.2008 for Rs.1,30,000/- towards discharge of legal enforceable debt. The said cheque was presented in the bank for encashment and the same was dishonoured on the ground that the account was closed. The

statutory notice was issued and since the accused did not make payment, the respondent no.2 complainant had filed the complaint under Section 138 of the N.I. Act.

2. The accused had pleaded not guilty. Subsequently, evidence was adduced and by judgment and order dated 13.04.2011, the learned Magistrate held the accused guilty of the offence under Section 138 of the N.I. Act and sentenced him to undergo simple imprisonment for 2 months and to pay to the complainant, compensation of Rs.1,30,000/- in default, to undergo one month simple imprisonment. The applicant accused has challenged the said judgment in Criminal Appeal No.309 of 2011 before the Sessions Court, Greater Mumbai. The said appeal was dismissed by the Additional Sessions Judge, Greater Mumbai, vide judgment and order dated 7.11.2012. Aggrieved by the said order, the applicant-accused has preferred this revision application.

3. During the pendency of this revision, both the parties have arrived at amicable settlement and, therefore, they sought leave to compound the offence. The applicant as well as respondent no.2 are present before the Court along with their respective counsels. They have filed the consent terms dated 04.09.2015, which reads as under.

“(a) The applicant has already deposited the compensation amount of Rs.1,30,000/- (Rupees one lakh thirty thousand only) in the Hon'ble Court in following manner.

(b) Rs.25,000/- deposited in the trial Court on 13.04.2011 and Rs.1,05,000/- in this Hon'ble Court on 07.03.2013 vide receipt no.006892.

(c) The applicant and the respondent have agreed that the respondent would be at liberty to withdraw the said amount deposited in the court by the applicant and the applicant AND THE Hon'ble Court vide order dated 27.08.2015 has allowed the respondent to withdraw the said amount and the receipts have been handed over to the respondent and also would assist the respondent as and when required in withdrawing the said amount.

(d) The applicant would sign all such required documents which would enable the respondent to withdraw the amount

of Rs.1,30,000/- from the Court.

(e) It is also agreed between the parties that the applicant would pay an additional sum of Rs.20,000/- (Rupees Twenty Thousand only) to the respondent as additional amount against the expenses incurred by the respondent while defending the case. The said amount is received by respondent no.2 as on date.”

4. The applicant as well as respondent no.2 have stated that the terms were read over and explained to them and that the consent terms dated 04.09.2015 are agreeable to them. The said consent terms are taken on record and marked “X” for identification.

5. In the light of the consent terms filed by the applicant and respondent no.2, leave is granted to compound the offence. The conviction under Section 138 of the N.I. Act and sentence imposed by the learned Magistrate vide order dated 13.04.2011 in C.C. No.5401/SS/2008 and confirmed by the appellate Authority vide order dated 07.11.2012 in Criminal Appeal No.309 of 2011 is

hereby quashed and set aside. Consequently, bail bonds stands discharged.

6. In view of the decision of the Apex Court in the case of ***Damodar S. Prabhu Vs. Sayed Babala H. (2010)5 SCC 663***, the applicant is directed to pay costs of 15% of the cheque amount i.e. Rs.19,500/- to the Maharashtra State Legal Services Authority, within a period of four weeks from the date of receipt of a copy of this order.

(ANUJA PRABHUDESSAI, J.)

Certificate

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