

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

CRIMINAL REVISION APPLICATION NO.78 OF 2013

Mrs. Madhavi Yashwant Kulkarni

...Applicant

Versus

The State of Maharashtra & Anr.

...Respondents

.....

Mr. Prayag Joshi i/b. Mr. Bipin Joshi for the Applicant.

Mr. Kishor P. Shiv, Respondent No.2 present in-person.

Mrs. A.S. Pai, APP for Respondent No.1-State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : 20th OCTOBER, 2015.

P. C. :

The Applicant herein has challenged the order dated 4th December, 2012 whereby the learned Additional Sessions Judge, Greater Bombay had dismissed the Criminal Appeal No.572 of 2010 challenging the order of conviction and sentence for the offence punishable under section 138 of the Negotiable Instruments Act.

2. The Respondent No.2 is present in-person. The learned counsel for the Applicant has stated that both the parties have settled the dispute amicably. They have filed the consent terms, which are as under :

“1. The parties have mutually and amicably settled the subject matter of above Revision and seek liberty to compound the offence under sections 138 and 141 of the Negotiable Instruments Act, 1881, in respect of dishonour of cheque of Rs.95,000/- dated 18.12.2007 drawn on State Bank of India, I.I.T. Powai Branch. The claim of the Respondent No.2 in the aforesaid dishonour of cheque is settled for Rs.95,000/-. On execution hereof, the Respondent No.2 agree and declare that he has received entire amount as mentioned hereinabove and nothing is due and payable by the Applicant to the Respondent No.2 in the following manner :

- (a) Appellant paid Rs.45,000/- (Rupees Forty five thousand only) to the Respondent No.2 in cash.*
- (b) On 20.03.2013, pursuant to the order dated 1.03.2013 passed by this Hon'ble Court in Criminal Application No.82 of 2013, the Appellant deposited Rs.31,000/- (Rupees thirty one thousand only) under receipt No.R0887391 in the Court of learned Metropolitan Magistrate, 31st Court, Vikhroli.*
- (c) On 23.11.2010, Appellant deposited Rs.19,000/- (Rupees Nineteen thousand only) under receipt No.S2421766 in the Court of learned Metropolitan Magistrate, 31st Court, Vikhroli.*

2. The Applicant handed over original Receipts to the Respondent No.2 and the Respondent No.2 is entitled to encash the said receipts and to withdraw the aforesaid sum of Rs.19,000/- and Rs.31,000/- referred in paragraph No.1 (b) and 1(c) above, without any objection or demur on the part of the Applicant. The Applicant agrees and undertakes to this Honourable Court to co-operate the Respondent No.2 in withdrawal of the aforesaid amounts of Rs.31,000/- and Rs.19,000/- referred hereinabove.

3. In view of the aforesaid terms of settlement, order of conviction passed by the learned Metropolitan Magistrate 31st Court, Vikhroli, dated 31.10.2010 and confirmed by Honourable Sessions Court in Criminal Appeal No.572 of 2010 dated 4.12.2012 is quashed and set aside.”

3. The consent terms are signed by the Applicant and Respondent No.2-Mr. Kishor P. Shiv, who is present in-person. The Respondent No.2 has placed on record the copy of the PAN card in order to establish his identity. The Respondent No.2 has stated that the terms are agreeable to him. The terms are therefore, taken on record and marked 'X' for the identification.

4. In the light of consent terms filed by both the parties, leave is granted to compound the offence punishable under section 138 of the Negotiable Instruments Act. Consequently, the impugned judgments dated 21st October, 2010 and 4th December, 2012 are set aside. Bail bonds stand discharged in terms of the consent terms.

5. The learned Metropolitan Magistrate, 31st Court, Vikhroli, is directed to pay to the Respondent No.2 the amount of Rs.19,000 and Rs.31,000/- deposited by the Applicant on 23.11.2013 as per the order dated 1st March, 2013 on filing proper application by the Respondent No.2.

6. In view of judgment of the Apex Court in the case of **Damodar S. Prabhu V/s. Sayed Babalal H. in Criminal Appeal No.963 of 2010**, the Applicant-accused is directed to pay cost of

Rs.15,000/- to the Maharashtra Legal Service Authority within two weeks from the date of this order.

7. The application stands disposed of.

(ANUJA PRABHUDESSAI, J.)