

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

CRIMINAL REVISION APPLICATION NO. 119 OF 2015

M/s. Bharti Automobiles .. Applicant

v/s.

M/s. No.1 Property Care & Anr. ..Respondents

Mr. Jagdish Shetty i/b Ms. Shraddha Gholap for the applicant

Ms. Dipti Mehta for respondent no.1

Mrs. R.V. Newton, APP for respondent State

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED: 9th SEPTEMBER, 2015.

P.C.

1. The applicants herein were accused in Criminal Case No.432/SS/2012 filed before the learned Metropolitan Magistrate, 60th Court, Kurla, Mumbai for the offence under Section 138 of the N.I. Act.

2. The case of the respondent no.1-complainant was that the applicants-accused were in need of housekeeping service and at their request, he had submitted the quotation and that the accused

had agreed to pay Rs.34,000/- per month excluding service tax and other charges. The respondent no.1-complainant stated that by August, 2011, the accused were liable to pay Rs.2,68,620/- towards housekeeping services. The accused had issued two cheques, dated 18.08.2011 and 21.10.2011 for Rs.87,750/- and Rs.44,770/- respectively towards part-payment of the said amount. The said cheques were dishonoured and despite issuance of the statutory notice, the applicants-accused did not pay the amount. Hence, proceedings were initiated under Section 138 of the N.I. Act before the learned J.M.F.C., Kurla, Mumbai.

3. Upon service of summons, accused remained present and had pleaded not guilty. Considering the evidence on record, the learned Magistrate held the accused nos. 1 and 2 guilty of offence under Section 138 of the N.I. Act and sentenced them to pay fine of Rs.1,50,000/-. The Respondent no.2 - accused no.2 further sentenced to suffer S.I. for one month and fine of Rs.1,50,000/- in default accused no.2 was directed to undergo S.I. for 15 days.

4. The appeal filed against the said order was dismissed by the learned Addl. Sessions Judge, Greater Bombay vide judgment and order dated 11.02.2015. Aggrieved by the said order, the applicant – accused has preferred this revision. During the pendency of the revision, parties have arrived at settlement. They have placed on record terms of settlement dated 9th September, 2015, which read thus :-

“The applicant/ original-accused and the respondent / original-complainant have settled / compromised matter.

(1) The applicant/original accused has paid sum of Rs.2,00,000/- (Rupees Two Lacs only) by D.D. No.13164 and D.D. No.131548 drawn on Punjab and Maharashtra Co-op. Bank Ltd. Andheri (East) Branch, Mumbai 400 093, total amount of Rs.2,00,000/-.

(2) It agreed that the respondent/original complainant have received cheque amount of alleged cheque which is in the original complaint filed by the respondent / original complainant.”

5. The consent terms are signed by the applicant no.2, Managing Director of the applicant no.1 as well as Vipul Kothari, Proprietor of respondent no.1 and their respective Counsels. The applicant no.2 and the proprietor of respondent no.1 have

confirmed the contents of the terms and have stated that the terms are acceptable to them. The consent terms dated 9th September, 2015 are taken on record and marked “X” for identification.

6. In view of the settlement arrived at between the parties, leave is granted to compound the offence.

7. Under the circumstances, the application is allowed in terms of prayer clause (a). The impugned judgment dated 11.02.2015 passed by the learned Addl. Sessions Judge, Greater Bombay in Criminal Appeal No. 157 of 2013 as well as judgment dated 11.02.2013 passed by the learned Metropolitan Magistrate, 60th Court, Kurla, Mumbai in C.C. No.432/SS/2012 are quashed and set aside. The accused are acquitted of offence under Section 138 of the N.I. Act. stand discharged.

8. 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 Rs. 19,879/- being 15% of the cheque amount to the Maharashtra State Legal Services Authority, within a period of two weeks from the date of receipt of a copy of this order. Cost is condition precedence.

(ANUJA PRABHUDESSAI, J.)

Certificate

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