

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

CRIMINAL APPEAL NO. 431 OF 2015

Mangesh Dadu Kamble

.. Appellant

v/s.

Deepak Jayant Khanekar & Anr.

..Respondents

Mr. Chaitanya Nikte for the appellant

Mr. M.S. Joglekar for the respondents

Mr. H.J. Dedhia, APP for respondent State

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED: 23rd OCTOBER, 2015.

P.C.

1. The appellant herein has challenged the judgment dated 21.01.2014 in S.C.C. No.18391 of 2012 whereby the learned 12th Joint Civil Judge, Junior Division and J.M.F.C., Pune acquitted the respondent no.1 for the offence under Section 138 of the N.I. Act.

2. The appellant herein had lodged a complaint under Section 138 of the N.I. Act alleging that the respondent no.1 had issued to him a cheque bearing No.071477 dated 02.03.2012 for

Rs.15,25,000/- towards consideration for purchase of the property. The said cheque was dishonoured and despite receipt of the statutory notice, the respondent no.1 did not pay the cheque amount. Hence, the appellant had lodged a complaint against the respondent no.1 for offence under Section 138 of the N.I. Act.

3. Upon being served with summons, the respondent no.1 accused put in his appearance, pleaded not guilty and claimed to be tried. Upon considering the offence, the learned Magistrate held that the appellant herein had failed to establish that the subject cheque was issued towards repayment of legally enforceable debt. In view of the said findings amongst others, the learned Magistrate acquitted the respondent no.1 accused for the offence under Section 138 of the N.I. Act.

4. Aggrieved by the said order, the appellant has preferred this appeal. During the pendency of the appeal, the appellant and the respondent no.1 have amicably settled their dispute and have

entered into consent terms dated 23.10.2015, which are placed on record, which read thus:-

“9. The parties to the said dispute i.e. the appellant and the respondent no.1 have mutually agreed to settle the same by way of the present consent terms.

10. The respondent no.1 has agreed to pay the said amount of Rs.15,25,000/- by way of D.D. Bearing No.006028 drawn on Pune People's Co-operative bank in favour of the appellant payable at Pune and in terms of the same the appellant has agreed to withdraw / not to prosecute the said appeal before this Hon'ble Court.

11. Further appellant herein grants unconditional no objection to any appropriate revenue authority / court/ tribunal to enter the name of the respondent no.1 in the 7/12 extract of the said property in the column of possessory rights as an owner and undertakes to sign / verify and / or do all the things necessary which will enable the respondent no.1 as per the provisions of law to enter his name in the 7/12 extract of the suit property and for the same he will not demand any additional consideration.

12. Both the parties herein agree that, the above referred order dated 26.11.2012 passed by the Ld. Circle Officer by in Case No.HNO/SR/Ghotawade/161/2012 mentions that the name of the respondent shall stand in possessory column of entire 33 are, however order should have been passed only in respect of 31.5 R as that is the area of the suit property. Therefore, the above referred no objection shall stand only for the respect of 31.5 are and the respondent herein confirms that the remaining 1.5 are is and always owned and possessed by the appellant.

Therefore, the name of the respondent shall be entered in the possessory column of the suit property as owner for the area of 31.5 are.

13. The appellant further declares that during the pendency of the above said dispute he has not created any third party interest with respect to suit property. The appellant also declares that there is no other civil litigation with respect to suit property filed by the appellant and if any such litigation filed by the appellant is pending in respect of the suit property then the same will be withdrawn / not prosecuted further.

14. The appellant further declares that title of the property is clean clear and marketable and appellant indemnifies to that effect, subject to the conditions mentioned in the sale deed dated 10.02.2012.

15. It is further agreed between the parties that, upon receipt of the aforesaid amount of Rs.15,25,000/- by the appellant from the respondent, the entire claim in the appeal shall be marked as satisfied and the appellant confirms the possession of the respondent in respect of the suit property i.e. 31.5 are only.

16. In the event of default in honoring the said D.D., the appeal shall stand revived without further reference to this Hon'ble Court."

5. The said consent terms are signed by the appellant and respondent no.1 and their respective Counsels. The appellant as well as the respondent no.1 are present before the Court along with their respective Counsels and have stated that they have settled their dispute amicably as per the consent terms. They have

confirmed the contents of the terms. The consent terms are, therefore, taken on record and marked “X” for identification. The appellant and the respondent no.1 have settled the dispute amicably. Hence, leave is granted to compound the offence.

6. However, 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 respondent no.1 accused is required to pay costs of 15% of the cheque amount to the Maharashtra State Legal Services Authority. The learned Counsel for the respondent no.1 submits that the respondent no.1 is an agriculturist and is in poor financial condition. He further prays that lenient view be taken to reduce the cost amount. In the light of the above statement, a lenient view is taken. In my view, the interest of justice would be met by directing the respondent no.1 accused to pay costs of Rs.20,000/-.

7. In the light of the consent terms filed by the applicant and respondent no.1, leave is granted to compound the offence.

Consequently, the conviction and sentence imposed by the learned Magistrate vide order dated 21.01.2014 in SCC No.18391/2012 is hereby quashed and set aside, subject to the respondent no.1 accused paying costs of Rs.20,000/- 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.)