

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

**CRIMINAL APPLICATION NO. 272 OF 2015
IN
CRI. REVISION APPLICATION NO. 13 OF 2015**

M/s. Chirag Manufacturing Co. & Others. ... Applicants.

V/s.

Parasmal Rajmalji Kothari & Anr. ... Respondents.

Mr. A. M. Saraogi, Advocate for the Applicants.

Mr. Yashpal Thakur i/by PKA Advocates for Respondent No.1.

Smt. A. A. Mane, APP for the State.

CORAM : M.L.TAHALIYANI,J.

DATE : 27th JULY, 2015

P.C. :

1 Heard learned counsel for the parties.

2 This application is made for recalling of the order of this court dated 26th June, 2015. In the ordinary course, such an application would not have even been heard by this court and would have been summarily dismissed. However, in the peculiar facts and circumstances of the case, I am inclined to give indulgence to the applicants, who are accused in criminal cases no. 658/SS/2009 before learned Metropolitan Magistrate, 43rd Court at Borivali, Mumbai.

3 In all there were four accused. Accused No.1 is the partnership firm and accused nos. 2,3 and 4 were partners of the said firm. At the conclusion of the trial, all the accused had been convicted for the offences punishable under section 138 of the Negotiable Instruments Act. They had been directed to undergo sentence to suffer SI for four months and applicant nos. 1 to 4 were directed to pay an amount of Rs.5,50,000/- to respondent no.1 by way of compensation.

4 The appeal filed by the applicants was dismissed. When the revision application before this court was taken up for hearing, this court had tried its level best to see that the dispute is resolved amicably. However, the dispute could not be resolved and ultimately, the revision application was partly allowed by order dated 26th June, 2015. However, immediately thereafter the dispute has been resolved amicably and, therefore, the parties are before this court and they have requested the court to recall the order dated 26th June, 2015.

5 Rs. 2,00,000/- had been already deposited by the applicants, which have been withdrawn by respondent no.1, the original complainant-Parasmal Rajmalji Kothari. The Applicant Nos. 2 and 3 have already deposited Rs. 3,50,000/- in the trial court. The consent terms have been filed. The consent terms state that the Applicant Nos. 2 and 3 i.e. Dinesh and Bharat will pay additional amount of Rs. 4,00,000/- to the

respondent no.1 -Parasmal, as agreed in the said consent terms. Both parties, therefore, pray for compounding of the offence.

6 As already indicated above, in the ordinary course it could not have been permitted. However, in view of the peculiar facts and circumstances of the present case, I am inclined to grant this application and declare that the offence punishable under section 138 of the Negotiable Instruments Act is compounded.

7 The Applicant Nos. 2 and 3 are hereby acquitted of the offence punishable under section 138 of the Negotiable Instruments Act. The amount of Rs. 3,50,000/- deposited by the Applicant Nos. 2 and 3 in the trial court shall be paid to the respondent no.1-Parasmal Kothari.

8 The Applicant Nos. 2 and 3 shall pay additional amount of Rs. 4,00,000/- to the respondent no.1- Parasmal Kothari within a period of one month, as stated in the consent terms.

9 The consent terms be taken on record and be marked "A" for the purpose of identification.

10 This criminal application stands disposed of in the above terms.

(JUDGE)