

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

CRIMINAL REVISION APPLICATION NO.355 OF 2015

Rajendra Manmohan Bartake

...Applicant

Versus

Uday Appaji Desai & Anr.

...Respondents

.....

Mr. Nilesh Masurkar for the Applicant.

Mr. Prashant S. Thombre for Respondent No.1.

Mr. J.H. Ramugade for Respondent No.2 – State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : 7th SEPTEMBER, 2015.

P. C. :

Not on board. Taken on board on being mentioned on the ground of urgency.

2. The Applicant herein was the accused in Criminal Case No.846/SS/2006 filed before 58th Court, Metropolitan Magistrate, Bandra, Mumbai. By judgment dated 1st November, 2012 he was convicted for the offence punishable under section 138 of the Negotiable Instruments Act and was sentenced to under go simple imprisonment for six months and was further directed to pay compensation of Rs.10,00,000/- in default to under go simple

imprisonment for nine months. The appeal filed against the said order was dismissed by the Sessions Court, Greater Mumbai vide judgment dated 7th July, 2015. Aggrieved by the conviction and sentence, the Applicant/accused has preferred this revision application.

3. During the pendency of this revision application the Applicant /accused and Respondent No.1 have settled the dispute amicably. They have filed the terms, which are as under :-

“The Applicant and the Respondent No.1 have agreed to resolve and settle their disputes and differences out of court. Hence, both the parties have unanimously and mutually arrived at consensus set out herein below :

a) The Applicant and the Respondent No.1 settled the present matter for full and final an amount of Rs.4,00,000/- (Rs. Four Lacs only) (Hereinafter referred to as “**settled amount**”).

b) The Applicant will pay the settled amount of Rs.4,00,000/- (Rs. Four Lacs only) by way of Demand Draft dated 3rd September 2015 bearing No.535 drawn on HDFC Bank Ltd. on 4th September 2015, the Applicant handed over the said DD to the

Respondent No.1.

c) It is agreed between the Applicant and the Respondent No.1 that the Applicant has deposited a sum of Rs.2,00,000/- in the trial court as per order passed by Ld. Session Court, Mumbai in order to suspend the sentence. After withdrawal of present Criminal Revision Application, the Applicant will be entitled to withdraw the said amount of Rs.2,00,000/-. The Respondent No.1 has no objection and gives his consent for withdrawal of the said amount of Rs.2,00,000/-

d) The Respondent No.1 agrees that the settled amount is full and final amount and he will not claim any amount/ interest from the Applicant in future.”

4. The terms are signed by the Applicant and Respondent No.1 alongwith their respective counsel. The terms are acceptable to the Applicant and the Respondent No.1 and hence, the terms are taken on record and marked 'X' for identification.

5. In view of the terms filed by the parties, leave is granted to compound the offence. Consequently, the judgments dated 1st

November 2012 and 7th July, 2015 are hereby set aside. The Applicant-accused is acquitted of the offence under section 138 of the Negotiable Instruments Act. Bail bonds of the Applicant stand discharged.

6. At this stage the learned counsel for the Applicant submitted that the Applicant is unable to pay 15% of cost in terms 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**. He has also placed on record the affidavit of the Applicant-accused wherein he has stated that he is a senior citizen and has several health ailments and due to his financial difficulties he is unable to pay the cost.

7. Considering the statements made by the Applicant in the affidavit, this is a fit case to take a lenient view. The Applicant is therefore, directed to deposit a sum of Rs.25,000/- in lieu of 15% of the cheque amount within a period of four weeks from the date of this order.

8. The revision application stands disposed of.

(ANUJA PRABHUDESSAI, J.)

CERTIFICATE

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

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