

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

CRIMINAL REVISION APPLICATION NO.348 OF 2014

Justin Austin Rodrigues	.. Applicant
v/s.	
Yogendrakumar R. Jaiswal & Anr.	.. Respondents

Mr. Diwakar A. Dwivedi for applicant.
Mr. Randhir Singh for Respondent No.1.
Mr. J. H. Ramugade, APP for Respondent No.2-State.

**CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED: 23rd SEPTEMBER, 2015.**

P.C.

1. The applicant is an accused in CC No.12653/SS/2009 filed before the Metropolitan Magistrate, 65th Court at Andheri, Mumbai under Section 138 of Negotiable Instruments Act. By Judgment dated 21/12/2011, the applicant-accused was held guilty for the offence punishable under section 138 of the Negotiable Instruments Act and sentenced to undergo simple imprisonment for three months and to pay compensation of Rs,6,00,000/-. The appeal being

Criminal Appeal No.759/2011 filed before the learned Addl. Sessions Judge, City Civil Court, Greater Mumbai was dismissed vide Judgment and order dated 06/09/2014. Being aggrieved by the said order, the applicant-accused has preferred this revision application.

2. During the pendency of the revision, the parties have arrived at a settlement and have filed Minutes of Consent, which are as under:

“1. Agreed and declared that the applicant/accused abovenamed has paid a sum of Rs. 6,00,000/- (Rupees Six Lakhs only) to respondent No.1 on or before signing of the Minutes of Consent by Pay Order No. 056602 dated 19/08/2015 drawn on Bank of India, Dahisar (W) Branch.

2. Respondent No.1 admits and acknowledges to have received the said sum of Rs. 6,00,000/- (Rupees Six Lakhs only) from the applicant/accused abovenamed on or before

signing of Minutes of Consent.

3. The parties hereto admit that the applicant/accused has already deposited a sum of Rs. 1,20,000/- (Rupees One Lac Twenty thousand only) in Metropolitan Magistrate, 65th Court, Andheri, Mumbai, vide receipt dated 30/01/2012. The respondent No.1 is hereby permitted to withdraw the said amount from Metropolitan Magistrate, 65th Court, Andheri, Mumbai, and for that purpose applicant/accused shall hand over the original receipt to respondent No.1.

4. Agreed and declared by applicant/accused and respondent No.1 that respondent No.1 has compounded the offence u/s 147 of the Negotiable Instruments Act, under provisions of Negotiable Instruments Act and in view of that, the offence u/s 138 be recorded as settled/compounded and impugned order and judgment dated 21/12/2011 passed by the Metropolitan Magistrate 65th Court, at Andheri and confirmed by Sessions Court be set aside and quashed.

5. *Respondent No.1, having received a sum of Rs.6,00,000/- (Rupees Six Lakhs only) from the applicant/accused in the manner aforesaid, has no claim whatsoever against the applicant/accused abovenamed.”*

3. The said Minutes are signed by the respondent No.1-complainant and their respective counsels. The applicant-accused and the respondent No.1-complainant are present along with their respective counsels before the Court and have confirmed the contents of the said consent terms. The same are taken on record and marked “X” for identification.

4. In the light of the settlement between the parties, leave is granted to compound the offence. The Judgment dated 21/12/2011 passed by the learned Magistrate in CC No.12653/SS/2009 and the Judgment dated 06/09/2014 in Criminal Appeal No.759/2011 passed by the learned Addl. Sessions Judge, City Civil Court, Greater Mumbai is quashed and set aside. The applicant-accused stands acquitted of the

offence under Section 138 of the Negotiable Instruments Act.
The Bail bonds stand discharged.

5. The respondent No.1 is permitted to withdraw the amount of Rs.1,20,000/- deposited in the Court of 65th Court of Metropolitan Magistrate, Andheri, Mumbai vide receipt in Case No.12653/SS/2009 dated 30th January, 2012.

6. In view of the judgment of the Apex Court in the case of ***Damodar S. Prabhu Vs. Sayed Babalal H. (2010) 5 SCC 663***, the applicant is required to pay costs at the rate of 15% of the cheque amount. The learned counsel for the applicant submits that the applicant has sold his jewellery and all other assets in order to settle case. He has submitted that applicant is not in a position to pay costs of 15% of the cheque amount and prayed that lenient view be taken. Considering the statement made by the counsel for the applicant and the financial position of the applicant, the applicant is directed to

pay a sum of Rs.10,000/- to Maharashtra Legal Services Authority, Mumbai by way of cost. Cost is condition precedent.

(ANUJA PRABHUDESSAI, J.)

Certificate

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