

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 23 OF 2016

Abdul Hanan Abdul Subhan Shaikh

..PETITIONER

VERSUS

State of Maharashtra and Another

..RESPONDENTS

....

Mr. T.M. Venjane, Advocate for petitioner.

Mr. A.R. Kale, APP for Respondent No.1.

Mr. D.D. Survade Patil, Advocate for Respondent No.2.

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**CORAM : N.W. SAMBRE, J.
DATED : 5th MAY, 2016**

ORDER :

1. The present petitioner was an accused in S.T.C. No. 2182/2009 decided by the learned Judicial Magistrate First Class, Latur on 10th April 2015 convicting the respondent-accused for an offence punishable under Section 138 of the Negotiable Instruments Act and sentencing to pay an amount of Rs.1 lakh of compensation and in default, to undergo simple imprisonment for six months.

2. The interested fact as is required to be noted by the learned Magistrate in paragraph 18 of the order of conviction observed thus:

“18) Another important aspect of the case is that, when matter was referred for mediation to Shri Vasant

Yadav, then 10th Jt. Civil Judge Jr. Dn., Latur, parties filed pursis Exh. 99. It is mentioned in the pursis Exh. 99 that, matter is settled between the parties for Rs.1,90,000/- (Actually cheque amount is for Rs.1,75,000/-) while passing pursis Exh.99 accused clearly admitted his liability to pay not only amount of Rs.1,75,000/- but Rs.1,90,000/-. Unless accused has borrowed amount from complainant, he would not have agreed to pay Rs.1,90,000/- to complainant.”

3. The present petitioner has not questioned the said order in appeal but has approached this Court questioning the warrant of arrest pursuant to the execution of the order of conviction.

4. Mr. Venjane, learned Counsel for the petitioner-accused would submit as under:

Rs.1 lakh was paid pursuant to the order of Trial Court directly to the complainant in view of compromise as mentioned in paragraph 18 of the judgment of Magistrate as quoted hereinabove. Rs.40,000/- directly paid to the complainant in cash on 10th October 2015. Rs.37,000/- deposited in Court in present proceedings and Rs.13,000/- paid in cash to the Counsel for respondent-complainant. According to him in view of the above, the learned Counsel for the petitioner submits that though the cheque amount is about Rs.1.75 lakhs, the amount of

Rs.1.90 lakhs is actually paid. The learned Counsel for the respondent has not disputed the above referred aspect of the matter however he submits that the cost of the litigation be also directed to be paid by the petitioner.

5. He would submit that he is ready for compounding.

6. Prima facie it is required to be noted that the proceedings under the Negotiable Instruments Act cannot be given colour of recovery proceedings. Apart from the above against the cheque amount of Rs.1.75 lakhs the petitioner has admittedly paid an amount of Rs.1.90 lakhs. The intention of the petitioner to settle the matter was apparent from the observations made by the learned Magistrate in his order of conviction particularly in paragraph 18.

7. In view of the above, in my opinion, it will be appropriate to accept the request of the respective parties for compounding. Hence the order of conviction passed by the learned Judicial Magistrate First Class, Latur is hereby set aside by ordering that the offence punishable under Section 138 of the Negotiable Instruments Act against the present petitioner is compounded. Petition stands allowed in above terms.

(N.W. SAMBRE, J.)