

FARAD CONTINUATION SHEET No.IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**CRIMINAL APPLICATION (APPR) NO. 233 OF 2016**
IN
CRIMINAL REVISION NO. 232 OF 2015

Office Notes, Office Memorandum of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. Y. R. Dube for Applicant
Smt. Anamika Malhotra, APP for State
Mr. Ashish Dubey for R. No. 2

CORAM : A. S. GADKARI, J.
DATE : 29th APRIL, 2016

P.C.

Heard the learned counsel appearing for respective parties. The learned counsel appearing for respondent no. 2 submitted that he has instruction to appear for respondent no.2 and will file his Vakalatnama within one week from today. The said statement is accepted.

2] The applicant has been convicted for the offence punishable under Section 138 of Negotiable Instruments Act, 1881 and sentenced to suffer Simple Imprisonment Till Rising of the Court and to pay a fine of Rs. 1,70,000/-, in default of payment of fine, to further suffer Rigorous Imprisonment for one month, by the learned Metropolitan Magistrate 63rd Court, Andheri, Mumbai in C.C.No.2112/SS/2012, by its Judgment and order dated 30.9.2013.

3] The Criminal Appeal No. 628/2013 preferred by the applicant has been dismissed by the learned Additional Sessions Judge, Gr. Mumbai by its Judgment and order dated 9.4.2015.

4] The learned counsel appearing for the applicant submitted that after the rejection of the appeal by the learned Additional Sessions Judge, Gr. Mumbai, the applicant preferred the present revision application in this Court and also filed Criminal Application No. 217/15 for suspension of sentence. This court by an order dated 4.9.2015 suspended the sentence till the disposal of the Criminal Revision Application. That the Applicant was directed to deposit an amount of Rs. 50,000/- before the Sessions Court. The learned counsel for the applicant submitted that as the applicant failed to deposit the said amount of Rs. 50,000/- before the Appellate Court, he has been taken into custody for undergoing the sentence on 25.4.2016 and since then the applicant is inside the jail.

5] The learned counsel appearing for the applicant today has tendered in this court an application for compounding of offence duly signed by the Advocate for the applicant, Advocate for the respondent no. 2 and respondent no. 2 (original complainant). It is stated that the applicant herein has compounded the said offence and has paid the entire due and payable amount to the respondent no. 2. The respondent no. 2 has also executed receipt for Rs. 1,70,000/- dated 29.4.2016 to that effect. The application for compounding the offence and receipt dated 29.4.2016 is taken on

record and as marked “X” for identification. The respondent no. 2 is personally present in the court. The learned counsel appearing for the respondent no.2 identifies him. The present matter was called out for hearing in the morning session when the present application and receipt of respondent no. 2 was tendered in this Court. This court had directed the Advocate for the applicant to pay an amount equivalent to 10% of the fine amount to the Maharashtra Legal Services Authority towards cost as per the guidelines issued by the Supreme Court in the case of ***Damodar S. Prabhu V/s Sayed Babulal H. reported in (2010) 5 SCC 663***. The learned counsel appearing for the applicant has produced before me a Demand Draft of Rs. 17,000/- drawn in the name of “Legal Aid Committee, High Court, Bombay” bearing No. 286229, dated 29.4.2016. The learned counsel appearing for the applicant fairly submitted that as his client was not aware of the exact and correct name of the said authority, the Demand Draft is drawn in the name of “Legal Aid Committee”.

6] He further submitted that the correct name of the authority is “State Legal Aid Fund”. The learned counsel on instructions submitted that his client would deposit the amount of Rs. 17,000/- either by way of cash or by way of Demand Draft in the name of “State Legal Aid Fund” by 2nd May, 2016 before the appropriate authority. The said statement is accepted as an undertaking given to this Court by the applicant herein. The said Demand Draft is returned to the learned Counsel for the applicant for its deposit before the said Authority.

7] In view of the above, the applicant is permitted to compound the Criminal Case No. 2112/SS/2012 filed before the learned Metropolitan Magistrate, 63rd Court, Andheri, Mumbai and the applicant is acquitted from the offence charged against him i.e. Section 138 of Negotiable Instruments Act.

8] The Criminal Application No. 232/15 is allowed in the aforesaid terms. The applicant be released from jail forthwith.

9] The learned counsel appearing for the applicant submitted that during the pendency of the appeal preferred by the applicant, his client has already deposited an amount of Rs. 34,000/- in the registry of the Metropolitan Magistrate, Andheri, Mumbai and an amount of Rs. 30,000/- in the registry of the Appellate Court. The learned counsel appearing for the respondent no. 2 fairly submitted that his client has no objection for refund of the said amount to the applicant herein.

10] In view of the same, the registry of the learned Metropolitan Magistrate, 63rd Court, Andheri, Mumbai and the Sessions Court, Gr. Mumbai is hereby directed to refund the said amounts to the applicant within a period of two weeks from the date of receipt of this order without any excuse.

11] As the Criminal Revision Application No. 232/2015 is allowed, the Criminal Application Nos. 460/2015 and 233/2016 does not survive and are accordingly disposed off.

12] All the concerns to act on authenticated copy of this order.

(A. S. GADKARI, J.)