

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.591 OF 2015**

WITH

CRIMINAL BAIL APPLICATION NO.516 OF 2015

Mr. Satyaprasad Shetty Applicant

Vs.

Mr. Harshavardhan H. Gautam & Anr. Respondents

Mr. Vivek Walavalkar i/by Siddharth Ingule, Advocate for the Applicant.

Mr. Harshavardhan H. Gautam, respondent no.1 in person.
Ms. S.V. Gajare, APP for the State.

Coram : Smt. R.P. SondurBaldota, J.

Date : 8th January, 2016

P.C.

1 The applicant in this revision application has been convicted of the offence punishable under Section 138 Negotiable Instruments Act by the judgment and order dtd. 25th April, 2012 in CC No.15964/SS/2008. He had preferred Criminal Appeal No.333/12 to the Court of Sessions. His appeal was dismissed by the order dtd. 4th November, 2015. Respondent no.1 is the original complainant. The appellant is the son-in-law of respondent no.1.

2 It was the case of respondent no.1 that he had provided financial assistance to the applicant at his request and the applicant had, towards discharge of that legally enforceable debt, issued a post-dated cheque in the sum of Rs.2,50,000/- to respondent no.1. When the cheque was presented for payment, the same was dishonoured on 10th June, 2008. After sending the statutory demand notice, respondent no.1 filed proceedings under Section 138 Negotiable Instruments Act. Admittedly, there is marital discord between the applicant and daughter of respondent no.1. She left the matrimonial house on 16th August, 2007 and since then has been residing with respondent no.1. In the same month she filed proceedings for the offence punishable under Section 498-A Indian Penal Code. The cheque in question had been presented for payment, in the month of June, 2008.

3 The defence taken by the applicant in the trial was that he had left, in his house, blank signed cheques which were taken away by his wife and used for the present proceedings. The courts below have disbelieved this defence of the applicant because during the course of trial, the applicant had denied his signature on the cheque. The applicant then attempted to establish that the cheque had been stolen from his home by examining his wife, the daughter of respondent no.1. When she did not support the applicant, he had with permission of the

court put questions in the nature of cross-examination to her. But even her cross-examination failed to establish the theft.

4 It has been vehemently argued before this court which argument was also advanced before the appellate court that the applicant has been acquitted of the offence punishable under Section 498-A Indian Penal Code. He has similarly been acquitted in another proceeding under Section 138 of Negotiable Instruments Act filed by his friend at Bangalore. The court at Bangalore has held that the complainant in that case had failed to establish existence of legally enforceable debt. In the case on hand, the courts below have appreciated evidence on record to hold that the applicant has failed to dislodge the legal presumption in favour of respondent no.1. With the assistance of Mr. Walavalkar, the learned advocate for the applicant, I have gone through the depositions of the witnesses in the proceedings and find that the observation of the Sessions Court as well as the trial court in the orders impugned are fully supported by the evidence. Further acquittal of the applicant in any other proceedings can have no bearing on his conviction in the case on hand. It will have to be assessed independently, solely on its merit.

5 Mr. Walavalkar has next vehemently argued that the matter was in fact to be settled between the parties and that the

applicant had also deposited in court pay-order in the sum of Rs.2,50,000/-, for the purpose. He complains that later respondent no.1 resiled from the settlement. Respondent no.1 who has appeared in person denies that any settlement had been arrived at between him and the applicant. He submits that without his knowledge and without his instructions, some talk had taken place between the advocates appearing for the parties. When he learnt about it, he discharged his advocate and has been appearing in person. It is not necessary for this court to go into the controversy relating to the settlement of the proceeding. The fact of settlement can be relevant only if the settlement in fact takes place. Failure of settlement cannot be an argument for consideration of the impugned order.

6 The applicant has failed to make out any case whatsoever for setting aside the order of the Sessions Court. Hence, the Revision Application is dismissed.

7 In view of dismissal of the Revision Application, the Civil Application does not survive, the same is accordingly disposed off.

(Smt. R.P. SondurBaldota, J.)