IN THE HIGH COURT OF JUDICATURE ATBOMBAY BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO.27/2015 WITH CRIMINAL APPLICATION NO.1005/2017

CRIMINAL REVISION APPLICATION NO.27/2015

Shaikh Gulam Hussain Sk. Gulam Rasul
Age-50 years, Occu-Business,
R/o. 3295 Lane No.2, Lohar Galli,
Resident of 21/3, Mukund Nagar,
Dhule, Dist.Dhule ..APPLICANT

Versus

1] The State of Maharashtra,
Through Public Prosecutor
High Court of Judicature at Bombay
Bench at Aurangabad)

2] Rajwade Mandal People Co-op
Bank Ltd. Dhule ..RESPONDENTS

Mr.Shaikh Mohammad Naseer Advocate for applicant
Mr. A.A.Jagatkar, APP for Respondent-State
Mr.A.D.Shinde, Advocate for respondent no.2.

CRIMINAL APPLICATION NO.1005/2017

Rajwade Mandal Peoples Co-op bank
Ltd. Dhule, Rajwade Path, Peth,
Gut No.1, Dhule (Liquidated)
Through its Chief Executive Officer,

Nitin S/o Sambhajirao Mane,
Age : 50 years, Occu-Service
R/o Dhule, Tq. & Dist.Dhule ..APPLICANT
[ORIG.RESP.NO.2]

Versus

1] Shaikh Gulam Hussain
Shaikh Gulam Rasul
Age 50 years, Occu:Business,
R/o 3295 Lane No.2,
Lohar Galli, R/o 21/3
Mukund Nagar, Dhule ..ORIG.APPLICANT

2] The State of Maharashtra
[Copy to be served on Public
Prosecutor High Court of
Bombay Bench at
Aurangabad.] .. RESPONDENTS

…

Mr.A.D.Shinde,Advocate for applicant
Mr.Shaikh Mohd.Naseer, Advocate for respondent no.1.
Mr.A.A.Jagatkar,APP for respondent no.2- State.

...

CRIMINAL REVISION APPLICATION NO.28/2015 WITH

CRIMINAL APPLICATION NO.1004/2017

CRIMINAL REVISION APPLICATION NO.28/2015

Shaikh Gulam Hussain Sk. Gulam Rasul
Age-50 years, Occu-Business,
R/o. 3295 Lane No.2, Lohar Galli,
Resident of 21/3, Mukund Nagar,
Dhule, Dist.Dhule ..APPLICANT

Versus

1] The State of Maharashtra,
Through Public Prosecutor
High Court of Judicature at Bombay
Bench at Aurangabad)

2] Rajwade Mandal People Co-op
Bank Ltd. Dhule ..RESPONDENTS

Mr.Shaikh Mohammad Naseer Advocate for applicant
Mr. A.A.Jagatkar, APP for Respondent-State
Mr.A.D.Shinde, Advocate for respondent no.2.

CRIMINAL APPLICATION NO.1004/2017

Rajwade Mandal Peoples Co-op bank
Ltd. Dhule, Rajwade Path, Peth,
Gut No.1, Dhule (Liquidated)
Through its Chief Executive Officer,
Nitin S/o Sambhajirao Mane,
Age : 50 years, Occu-Service
R/o Dhule, Tq. & Dist.Dhule ..APPLICANT
[ORIG.RESP.NO.2]

Versus

1] Shaikh Gulam Hussain
Shaikh Gulam Rasul
Age 50 years, Occu:Business,
R/o 3295 Lane No.2,
Lohar Galli, R/o 21/3
Mukund Nagar, Dhule ..ORIG.APPLICANT

2] The State of Maharashtra
[Copy to be served on Public
Prosecutor High Court of
Bombay Bench at
Aurangabad.] .. RESPONDENTS

…

Mr.A.D.Shinde,Advocate for applicant
Mr.Shaikh Mohd.Naseer, Advocate for respondent no.1.
Mr.A.A.Jagatkar,APP for respondent no.2- State.
…

CORAM : V.L.ACHLIYA,J.
DATE : 10/03/2017

ORAL JUDGMENT :-

1] Rule. Rule returnable forthwith. By consent heard finally in view of compromise arrived in between the applicant and respondent.

2] The respondent-complainant filed two separate proceedings on account of dishonour of two cheques issued by the accused alleging therein that accused had secured the loan of Rs.7 lakhs from the complainant-bank and towards part repayment of the loan amount the accused had issued two cheque of Rs.1,52,212/- and Rs.1,55,477/-. The cheques were dishonoured when presented for encashment.

3] On account of dishonour of cheque of Rs.1,55,477/- dated 21/1/2004, the complainant filed Criminal Complaint under Section 138 of Negotiable Instruments Act (hereinafter referred to as the N.I.Act for short) which was registered as S.T.Criminal Case No.1330/2004. In that case vide judgment and order dated 5/2/2009, the accused was held guilty of offence under Section 138 of N.I. Act and sentenced to undergo simple imprisonment for 3 months and pay fine of Rs.1,55,000/- and out of fine amount the amount of Rs.1,25,000/- directed to be paid as compensation to complainant. Being aggrieved, the appellant preferred Criminal Appeal before Sessions Court, Dhule vide Criminal Appeal No.18/2009. While filing appeal, as fine amount, accused deposited Rs.1,25,000/- out of which the complainant has withdrawn Rs.55,000/- and amount of Rs.70,000/- is lying with JMFC Court, Dhule. By judgment and order dated 14/1/2015, the learned Sessions Judge, dismissed the appeal and confirmed the decision rendered by the trial Court. As against the judgment and order of conviction passed by trial Court and confirmed by Sessions Court in appeal, the accused has preferred criminal revision which is registered as Criminal Revision Application No.27/2015.

4] On account of dishonouor of cheque of Rs.1,52,212/- the complainant filed another Criminal Complaint under Section 138 of N.I.Act which came to be registered as S.T.Criminal Case No.4781/2003. By judgment and order dated 18/9/2009, passed by JMFC (Court No.7), Dhule, the accused came to be convicted under Section 138 of N.I.Act and sentenced to undergo simple imprisonment for 2 months and pay fine of Rs.1,25,000/-. Out of fine amount of Rs.1,25,000/- the amount of Rs.1,21,000/- was ordered to be paid as compensation to complainant. Being aggrieved by said judgment and order, the accused preferred appeal before Sessions Court, Dhule which came to be registered as Criminal Appeal No.115/2009. At the time of filing of appeal, accused has deposited Rs.1,25,000/- as the fine amount which is still lying with JMFC Court Dhule. By judgment and order dated 14/1/2015, the Sessions Court dismissed the appeal and confirmed the decision rendered by trial Court. Being aggrieved the accused has preferred Criminal Revision before this Court which is registered as Criminal Revision Application No.28/2015.

5] During pendency of revision petitions, the complainant and the accused have decided to settle the entire dispute on account of loan transaction of Rs.7 lakhs. They have entered into agreement and decided to settle the loan account for Rs.14 lakh to be payable by accused to complainant after adjusting the amount deposited by accused with the bank and the amount deposited as fine amount with the trial Court. The balance amount is agreed to be paid by accused before 31/5/2017. In view of the settlement arrived, the complainant and accused have filed consent terms. The consent terms are taken on record and marked as “X” for identification in both the proceedings.

5] Shri Nitin Sambhajirao Mane, Chief Executive Officer of complainant-bank accused present alongwith their respective advocates admit the contents of consent terms as true and correct and they have voluntarily signed the same. They further reiterated the terms of consent as recorded in the consent terms.

6] As per the settlement arrived, the accused has agreed to pay Rs.14 lakhs as a full and final payment towards loan amount of Rs.7 lakh secured in the year 2002. The amount of Rs.6,83,000/- deposited by accused in the loan account since after securing the loan is agreed to be adjusted towards amount of Rs.14 lakhs as agreed to be paid by accused to complainant. It is further agreed that amount of Rs.1,25,000/- and Rs.70,000/- lying deposited in the Court be allowed to be withdrawn by complainant-bank. The accused has agreed to pay the balance amount of Rs.5,26,000/- on or before 31/05/2017. It is also agreed that in case the accused failed to pay Rs.5,26,000/- on or before 31/05/2017, the complainant-bank will be at liberty to recover the entire amount due in terms of loan advanced to the accused after adjusting the amount paid till 31/05/2017.

7] Looking to the overall nature of the transaction which his a commercial transaction, I am inclined to entertain the request of the parties to allow them to compound the offence. The offence under Section 138 of N.I.Act is made compoundable by virtue of Section 147 of N.I.Act. As provided under Section 326(6) of Cr.P.C., the Court exercising revisional power under Section 401 of Cr.P.C. is empowered to allow the compounding of offence even at the stage of revision. I am therefore inclined to grant permission to applicant-accused and respondent-bank to compound the offence in both the cases in terms of compromise purshis filed on record. Hence the following order :

ORDER

I] The applicant-accused and the respondent-complainant bank are permitted to compound the offence under Section 138 of N.I.Act.

II] Criminal Revision Applications No.27/2015 and

28/2015 stand disposed of in terms of consent terms filed by the parties.

III] In consequence of compounding of offence, the conviction of applicant-accused in S.T.Criminal Case No.1330/2004 and S.T.Criminal Case No.4781/2003 under Section 138 of N.I.Act is set aside and the accused stands acquitted in both the cases. The fine amount deposited by accused is allowed to be adjusted towards the amount to be payable by accused to complainant. The fine amount of Rs.1,25,000/- and Rs.70,000/- lying deposited in Court in the cases be paid to complainant-bank and same be adjusted towards payment of loan. The amount of Rs.55,000/- already withdrawn by the complainant-bank be adjusted towards the payment of loan in terms of agreement arrived between the complainant and accused.

IV] Rule stands disposed of in above terms.

(V.L.ACHLIYA,J.)

umg/