

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.395 OF 2016  
WITH  
CRIMINAL APPLICATION NO.387 OF 2016  
AND  
CRIMINAL APPLICATION NO.122 OF 2017

|                                |             |
|--------------------------------|-------------|
| Pradip Anant Patil             | Applicant   |
| versus                         |             |
| Kumar Annaso Patil and another | Respondents |

Mr.Dilip B. Shinde for Applicant.  
Mr.Manoj A. Patil for Respondent no.2.  
Mr.A.A.Takalkar, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 22<sup>nd</sup> February 2017

PC :

1. Criminal Application No.122 of 2017 is not on board. Upon mentioning, papers are allowed to be produced and tagged with revision application.
2. Heard learned counsel appearing for both sides. The Applicant was convicted for offence under Section 138 of Negotiable Instruments Act, 1881 ('said Act') by judgment and order dated 19th December 2007 passed by Judicial Magistrate, First Class, Court No.4, at Kolhapur. The Applicant was directed to pay compensation amount of Rs.60,000/- to the complainant/Respondent no.1 and in default it was directed that he was to suffer imprisonment for one month.

3. The aforesaid judgment and order of conviction was challenged by the Applicant by preferring an appeal before the Sessions Court being Appeal No.10 of 2008. The Sessions Court had suspended the execution of sentence awarded by the Trial Court till disposal of said appeal. Since the Applicant was absent before the Trial Court on several occasions, the Additional Sessions Judge, Kolhapur by order dated 4th June 2016 dismissed the said appeal for default. The proceedings were sent to the Trial Court for necessary implementation of the order of conviction and sentence passed by Trial Court.

4. In order to challenge the aforesaid order, the Applicant had preferred present revision application before this Court. On 13th July 2016, the application was heard by this Court and the order passed by the Sessions Court was stayed. The Applicant was also directed to deposit Rs.30,000/- in the registry of this Court. Prior to that, the Applicant had deposited Rs.30,000/- before the Sessions Court.

5. It is submitted that during pendency of the revision application, the dispute between both the parties has been settled. In view of the settlement, the revision Applicant has preferred present Criminal Application No.122 of 2017 before this Court. In this application it is prayed that, as both the parties have arrived at amicable settlement, the parties may be permitted to compound the offence for which the Applicant has been convicted. The Applicant and Respondents have also executed consent terms dated 20th

February 2017 which are annexed to Criminal Application No.122 of 2017.

6. In the consent terms dated 20th February 2017, it has been stated that Respondent no.1 may be permitted to withdraw the amount which is deposited by the Applicant before the Trial Court/ Sessions Court as well as amount deposited in this Court. It is further stated that the Respondent no.1/complainant has no objection for setting aside the conviction order dated 19th December 2007 passed by JMFC, Court No.4, Kolhapur.

7. The Applicant and Respondents are present before this Court. They are identified by their respective counsel. The Respondent no.1 has contended for setting aside the conviction on account of settlement between both the parties. I have gone through the papers. I have also perused the application for compounding preferred by the Applicant as well as consent terms annexed to said application. In view of the settlement, the prayers made in Criminal Application No.122 of 2017 can be granted. Offence under Section 138 of the Act is compoundable in accordance with Section 147 of the Negotiable Instruments Act, 1881. Although the appeal preferred by the Applicant was dismissed for default, I find that there is no point in remitting the appeal back to the Sessions Court in view of settlement arrived at between the parties. Taking into consideration the averments made in the application and the submissions canvassed by learned counsel for parties and on perusal of the contents of the consent terms, Criminal Application No.122 of 2017 deserves to be allowed.

8. Hence, I pass following order :

(a) Criminal Application No.122 of 2017 is allowed;

(b) The judgment and order dated 19th December 2007 passed by Judicial Magistrate, First Class, Court no.4, Kolhapur in Complaint No.5943 of 2005 convicting the Applicant for offence under Section 138 of the Negotiable Instruments Act, 1881 and directing him to pay compensation in the amount of Rs.60,000/- is hereby quashed and set aside;

(c) Respondent no.1/complainant is permitted to withdraw Rs.30,000/- deposited by the Applicant before Additional Sessions Judge, Kolhapur in Appeal No.10 of 2008, as well as amount of Rs.30,000/- deposited by the Applicant in this Court;

(d) Criminal Revision Application No.395 of 2016, Criminal Application No.387 of 2016 and Criminal Application No.122 of 2017 stand disposed of in above terms;

(3) Registry of this Court as well as registry of District and Sessions Court, Kolhapur to act on an authenticated copy of this order duly issued by this Court.

(PRAKASH D. NAIK, J.)

MST