

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.152 OF 2016

WITH

CRIMINAL APPLICATION NO.204 OF 2016

WITH

CRIMINAL REVISION APPLICATION NO.153 OF 2016

Kirit Gadhiya

)...Applicant

V/s.

Pradeep S. Phanse and Anr.

)...Respondents

Mr. Akhilesh Singh, Advocate for the Applicant.

Mr. Amol Patankar, Advocate for R.No.1.

Mr. S.V.Gavand, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 4th May, 2017.

P.C. :

Leave to amend forthwith in terms of the order dated 21.3.2017 in Criminal Revision Petition No.152 of 2016.

2 Late Shri Pradeep Phanse was original complainant in Criminal Case bearing no.30/SS/2011 which came to be decided on 25.6.2014 by the learned Metropolitan Magistrate, 7th Court, Dadar, Mumbai thereby convicting the revision petitioner of the

offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The revision petitioner came to be sentenced to suffer rigorous imprisonment for one month apart from direction to pay compensation of Rs.13.50 Lakhs within three months and in default to undergo further simple imprisonment for six months. Feeling aggrieved by this conviction and sentence, revision petitioner Kirit Gadhiya preferred Criminal Appeal bearing no.897 of 2014 which came to be dismissed by the learned Additional Sessions Judge, Mumbai on 20.2.2016 thereby confirming the conviction and sentence.

3 During the pendency of the revision petition at the instance of the original accused, complainant Pradeep Phanse passed away and the revision petition came to be defended by his widow Mrs. Rashmi Phanse in terms of the order dated 21.3.2017 passed in Criminal Miscellaneous Application NO.96 of 2017.

4 So far as the Criminal Revision Petition No.153 of 2016 is concerned, complainant Rashmi Phanse lodged a complaint for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 bearing C.C.No.8143/SS/2010

which came to be allowed by the learned Metropolitan Magistrate, 7th Court, Dadar, Mumbai on 2.7.2014. The revision petitioner Kirit Gadhiya/Original Accused came to be convicted of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 in the said case and he is sentenced to suffer rigorous imprisonment for one month apart from direction to pay compensation of Rs.8.80 Lakhs and in default to undergo simple imprisonment for six months. This order came to be challenged by the revision petitioner/accused by filing Criminal Appeal bearing no.896 of 2014 which came to be dismissed on 20.2.2016 by the learned Additional Sessions Judge, Mumbai.

5 Feeling aggrieved by the judgments and orders in the Criminal Appeal No.897 of 2014 and the Criminal Appeal No.896 of 2014 dismissing the appeals and confirming conviction and sentence, these are revision petitions at the instance of the original accused.

6 Heard the learned advocates appearing for the revision petitioner-original accused as well as the respondent/complainant as well as the learned APP for the State.

7 The learned advocate appearing for the revision petitioner so also the learned advocate appearing for the respondent/complainant unanimously submitted that the matter is settled out of the Court and accordingly, the Consent Terms have been drawn. They have submitted common 'Consent Terms' in these revision petitions which are marked as Exhibit 'X' for the purpose of Identification. The learned advocate appearing for the revision petitioner undertakes to place on record photo-copy of the 'Consent Terms' in Criminal Revision Petition No.153 of 2016 and, therefore, original 'Consent Terms' which are marked as Exhibit 'X' be placed on record of the Criminal Revision Petition No.152 of 2016. Upon being asked Mrs. Rashmi Phanse the legal heir of the deceased complainant Pradeep Phanse in Criminal Revision Petition No.152 of 2016 as well as complainant in Criminal Revision Petition No.153 of 2016 submits that the 'Consent Terms' bear her signature and compromise has been arrived at between her and the original accused without there being any undue influence, coercion or fraud upon her. She further stated that in terms of the 'Consent Terms' both revision

petitions be allowed and the complaint filed by her as well as her deceased husband be dismissed. The learned advocate appearing for the respondent/legal heir of Pradeep Phanse, i.e. Mrs. Rashmi Phanse identifies Mrs. Rashmi Phanse.

8 Perusal of the 'Consent Terms' shows that the complainant has accepted six post-dated cheques in lieu of settlement of her dues as well as dues of her deceased husband and it is agreed between the parties that if post-dated cheques are dishonoured, the entire balance amount shall be due for payment apart from pursuing other legal remedies. The 'Consent Terms' also reflects that the complainant has compounded the offences.

9 The offence punishable under Section 138 of the Negotiable Instruments Act, 1881 is compoundable. Out of their free will and consent, the complainant as well as original accused have compromised the matter out of the Court by settlement outside the Court on executing the 'Consent Terms' at Exhibit 'X'. Therefore, the following order:

- (1) Both revision petitions are allowed.
- (2) Judgments and orders dated 20.2.2016

passed by the learned Additional Sessions Judge, Mumbai in Criminal Appeal Nos.897 of 2014 and 896 of 2014 are quashed and set aside. The complaint bearing no.30/SS/2011 and the complaint bearing no.8143/SS/2010 filed by the complainant are dismissed.

(3) It is made clear that breach of terms of settlement reflected in clause 6 of the 'Consent Terms' shall automatically result in revival of the impugned judgments and orders of conviction and sentence of the revision petitioner/accused.

(4) With this, both revision petitions stand disposed of.

(A. M. BADAR, J.)