

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.175 OF 2017

IN

CRIMINAL REVISION APPLICATION NO.178 OF 2017

WITH

CRIMINAL APPLICATION NO.176 OF 2017

IN

CRIMINAL REVISION APPLICATION NO.179 OF 2017

WITH

CRIMINAL APPLICATION NO.177 OF 2017

IN

CRIMINAL REVISION APPLICATION NO.180 OF 2017

DINESH BABULAL BHANSALI

)...APPLICANT

V/s.

BHUPESH SHAH AND ANR.

)...RESPONDENTS

Mr.Ashish Baraskar, Advocate for the Applicant.

Mr.Jatin Shah, Advocate for Respondent No.1.

Ms.A.A.Takalkar, APP for the Respondent – State in Criminal Revision Application No.178 of 2017.

Mr.PH.Gaikwad-Patil, APP for the Respondent – State in Criminal Revision Application No.179 of 2017.

Ms.V.S.Mhaispurkar, APP for the Respondent – State in Criminal Revision Application No.180 of 2017.

CORAM : A. M. BADAR, J.

DATE : 29th MARCH 2017.

P.C. :

1 These three applications moved in three revision petitions are being decided by this common order as parties to the proceedings are same and proceedings are arising out of common transaction between parties.

2 Criminal Application No.175 of 2017 is arising out of Criminal Revision Application No.178 of 2017 wherein the applicant / revision petitioner has challenged the judgment and order passed by the learned Sessions Judge in Criminal Appeal No.864 of 2014 dismissing his appeal. In Criminal Application No.176 of 2017 in Criminal Revision Application No.179 of 2017, the applicant / revision petitioner is challenging the judgment and order dated 6th February 2017 passed by the appellate court dismissing his appeal and confirming the judgment and order of the learned trial court. In Criminal Application No.177 of 2017

filed in Criminal Revision Application No.180 of 2017 the applicant / revision petitioner is challenging the judgment and order dated 6th February 2017 passed by the learned appellate court thereby dismissing his appeal and confirming the conviction and sentence imposed on him by the learned trial court.

3 Respondent no.1 / original complainant had preferred Criminal Case bearing No.100/SS/2013 alleging commission of offence punishable under Section 138 of the Negotiable Instruments Act by the applicant / revision petitioner in Criminal Application No.175 of 2017. By the judgment and order dated 28th August 2014, the learned trial Magistrate was pleased to convict the applicant / accused of the offence punishable under Section 138 of the Negotiable Instruments Act and he has been sentenced to suffer simple imprisonment for six months and to pay fine of Rs.10,000/- and in default to undergo further simple imprisonment for seven days. In that matter, cheque for an amount of Rs.9.50 lakh came to be dishonoured for want of funds. The applicant / revision petitioner preferred Criminal Appeal

bearing No.864 of 2014 challenging the judgment and order of the learned trial Magistrate whereas the respondent no.1 / original complainant preferred revision petition bearing no.1550 of 2014 challenging the impugned judgment and order as no compensation was awarded by the learned trial Magistrate despite convicting the appellant / accused therein for the offence punishable under Section 138 of the Negotiable Instruments Act. It is seen that though the appellant / accused has challenged the judgment of the appellate court dismissing his appeal, he has not challenged the order passed in the revision petition directing him to pay compensation of Rs.9.50 lakh, though his appeal and revision petition filed by the original complainant came to be decided by common order on 6th February 2017.

4 Criminal Application No.176 of 2017 which is arising out of judgment and order of the learned trial Magistrate in Criminal Case No.750/SS/2010 whereby the learned trial Magistrate has awarded compensation of Rs.37,10,000/- payable by the applicant / accused to the respondent no.1 / original

complainant. In that criminal case, the applicant / accused came to be directed to suffer simple imprisonment for one year and in default of payment of compensation of 37,10,000/- to undergo further simple imprisonment for three months. In that matter, the cheque amount was for Rs.28 lakh.

5 Criminal Application No.177 of 2017 is arising out of Criminal Case no.751/SS/2010 in which the learned trial Magistrate upon conviction of the applicant / accused of the offence punishable under Section 138 of the Negotiable Instruments Act, directed him to suffer imprisonment for six months apart from directing him to pay compensation of Rs.12.60 lakh and in default to undergo further imprisonment for forty-five days. In that matter, cheque amount was for Rs.9.50 lakh. It is worthwhile to note that in all matters, compensation is stated to be payable with interest at the rate of 9 percent per annum.

6 I have heard the learned advocate appearing for the applicant / revision petitioner / original accused at sufficient

length. He argued that the applicant / revision petitioner / original accused has good case on merit. The demand notice is not having requisite pleadings regarding legally enforceable debt and therefore, it cannot be construed as a statutory notice as envisaged by Negotiable Instruments Act. Therefore, the complaints are liable to be dismissed. The learned advocate further argued that because of financial crunch, the applicant / revision petitioner / original accused is not in a position to pay the amount of compensation as directed, but uptill now he has paid amount of Rs.29 lakh from time to time during pendency of the proceedings before the courts below. It is further argued that applicant / revision petitioner / original accused is ready to settle the matter, if he is released on bail on deposit of minimum amount.

7 I have heard the learned advocate appearing for respondent no.1 / original complainant. He vehemently opposed the applications and submitted that during pendency of the appeals before the appellate court, consent terms came to be

executed between parties before the Judge Mediator on 14th October 2014. However, those were not followed by the applicant / revision petitioner / original accused. He further argued that on two occasions, proclamation came to be issued against the present applicant / revision petitioner / original accused as he failed to attend the appellate court. On each occasion, by moving applications, the applicant / revision petitioner / original accused herein had sought stay of proclamation but subsequently he withdrew the application. The learned advocate further argued that the applicant / revision petitioner / original accused undertook before the appellate court that he is going to sell out his premises for discharging the debt, but without intimation to the appellate court, premises were sold out and the amount of consideration was not used for payment of compensation to the complainant.

8 In reply, the learned advocate for the applicant / revision petitioner / original accused argued that some amount from sale of the premises came to be paid to the respondent /

original complainant but as there were several debtors, other debtors snatched that amount from the applicant / revision petitioner / original accused.

9 I have carefully considered the rival submissions and also perused the record made available.

10 The transaction dates back to the year 2008. It is case of respondent no.1 / original complainant that steel worth Rs.88,34,000/- came to be supplied by the complainant to the applicant / revision petitioner / original accused and towards part payment of the cost of the material supplied, three cheques amounting to Rs.9.50 lakh, 28 lakh and 9.50 lakh came to be issued. However, those cheques came to be dishonoured for want of funds. Perusal of the appellate judgment goes to show that statement of account came to be produced by the complainant on record. The learned appellate court has observed that the applicant / revision petitioner / original accused has no explanation for this statement of account. It is held by courts

below that cheques in dispute were issued for legally recoverable debt. There is concurrent finding of fact by both courts below on this aspect. In this view of the matter, *prima facie*, at this stage, it cannot be held that for want of pleadings regarding legally recoverable debt in the demand notice, complaints deserve to be dismissed.

11 Considering the fact that the transaction in question is of the year 2008 and considering the quantum of compensation awarded vis-a-vis the amount of cheque as well as the fact that interest at the rate of 9 percent per annum is also awarded by the court below, I propose to pass the following order :

- i) On deposit of Rs.9.50 lakh in trial court, the applicant / revision petitioner / original accused in Criminal Application No.174 of 2017 be released on bail on his executing P.R.Bond in the sum of Rs.15,000/- and on furnishing surety in like amount.
- ii) On deposit of compensation amounting to Rs.37,10,000/- before the trial court, the applicant /

revision petitioner / original accused in Criminal Application No.176 of 2017 be released on bail on his executing P.R.Bond in the sum of Rs.15,000/- and on furnishing surety in like amount.

iii) On deposit of Rs.12.60 lakh before the trial court, the applicant / revision petitioner / original accused in Criminal Application No.177 of 2017 be released on bail on his executing P.R.Bond in the sum of Rs.15,000/- and on furnishing surety in like amount.

iv) The applicant / revision petitioner / original accused is entitled to set off the amount, if any, allegedly deposited by him before the court belows during pendency of the proceedings before those courts.

v) All applications stand disposed of in above terms.

(A. M. BADAR, J.)