

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL REVISION APPLICATION (STAMP) NO.232 OF 2017
WITH
CRIMINAL APPLICATION NO.211 OF 2017
AND
CRIMINAL APPLICATION NO.212 OF 2017
IN
CRIMINAL REVISION APPLICATION (STAMP) NO.232 OF 2017**

AND

**CRIMINAL REVISION APPLICATION (STAMP) NO.233 OF 2017
WITH
CRIMINAL APPLICATION NO.214 OF 2017
AND
CRIMINAL APPLICATION NO.215 OF 2017
IN
CRIMINAL REVISION APPLICATION (STAMP) NO.233 OF 2017**

MR.MANMOHAN SINGH)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA & ANR.)...RESPONDENTS

Mr.Yashpal Thakur, Advocate for the Applicant.

Ms.A.A.Takalkar, APP for the Respondent – State in Criminal Revision Application (Stamp) No.232 of 2017.

Mr.S.V.Gavand, APP for the Respondent – State in Criminal Revision Application (Stamp) No.233 of 2017.

Mr.Bhavesh Thakur, Advocate for Respondent No.2.

CORAM : A. M. BADAR, J.

DATE : 13th APRIL 2017

P.C. :

1 Today delay in preferring these revision petitions is condoned by separate order and with consent of parties, these revision petitions are being heard.

2 Revision Petition (Stamp) No.232 of 2017 is by original accused whereby he is challenging judgment and order dated 6th September 2010 passed by the learned Sessions Judge, Dadra and Nagar Haveli, Silvassa, in Criminal Appeal No.5 of 2008, whereby, his appeal came to be allowed partly by confirming his conviction under Section 138 of the Negotiable Instruments Act. However, sentence of six months rigorous imprisonment awarded by the learned trial Magistrate is modified to one month simple imprisonment and instead of compensation of Rs.6.50 Lakh awarded by the learned trial Magistrate, the

learned appellate court directed the revision petitioner / original accused to pay fine of Rs.6.50 Lakh, out of which, if realised, an amount of Rs.6 Lakh was directed to be paid to the complainant as compensation. The revision petitioner / original accused in this revision petition came to be convicted of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, in Summary Criminal Case No.373 of 2003 by the learned Chief Judicial Magistrate, Dadra and Nagar Haveli, Silvassa, vide his judgment and order dated 19th December 2007.

3 Revision Petition (Stamp) No.233 of 2017 is arising out of judgment and order dated 6th September 2010 passed by the learned Sessions Judge, Dadra and Nagar Haveli, Silvassa, in Criminal Appeal No.6 of 2008. That criminal appeal came to be partly allowed. The learned Sessions Judge was pleased to confirm conviction of the revision petitioner / original accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. However, sentence of rigorous imprisonment of six months awarded by the learned trial

Magistrate was modified to simple imprisonment for one month and instead of compensation of Rs.7.50 Lakh awarded by the learned trial Magistrate, the learned appellate court directed the revision petitioner / original accused to pay fine of Rs.7.50 Lakh, out of which, if realised, an amount of Rs.7 Lakh was directed to be paid to the complainant as compensation. The revision petitioner / original accused in this revision petition was convicted by the learned Chief Judicial Magistrate, Dadra and Nagar Haveli, Silvassa, in Summar Criminal Case No.355 of 2003 vide judgment and order dated 15th September 2008.

4 The learned advocate appearing for the revision petitioner / original accused as well as the learned advocate appearing for respondent no.2 / original complainant have unanimously submitted that parties have settled the matter outside the court and they have already filed Consent Terms on record of this court. For the purpose of identification, Consent Terms in both these revision petitions are marked as “Exhibit X” respectively. From perusal of the consent terms placed on record

in both revision petitions, which are marked at “Exhibit X” it is seen that original complainant as well as the accused have already settled the matter.

5 Today, in both these revision petitions, affidavits are tendered by the learned advocate appearing for respondent no.2 / original complainant. Those affidavits are taken on record. Affidavits are accompanied by resolution by respondent no.2 / original complainant to the effect that the said Company has authorized Mr.Bharat C. Shah to enter into any compromise, understanding or agreement with debtors in the event of settlement and to withdraw any criminal proceedings related to any recovery etc. Authorized representative of respondent no.2 / original complainant Nilkamal Limited – Mr.Bharat C. Shah is present before the court. He is duly identified by the learned advocate appearing for respondent no.2 / original complainant. Upon being asked, Mr.Bharat C. Shah has stated that the matter has been compromised outside the court and respondent no.2 / original complainant has no objection if the impugned judgments

and orders of the appellate court are quashed and set aside and for acquitting the revision petitioner / original accused of the offence alleged against him. The learned advocate appearing for respondent no.2 / original complainant reiterated the same contention.

6 The offence punishable under Section 138 of the Negotiable Instruments Act, 1881, is compoundable and it is seen that out of their free will parties have amicably settled the matter outside the court, in view of consent terms placed on record as well as affidavits tendered across the bar today. Therefore the order :

ORDER IN

CRIMINAL REVISION APPLICATION (STAMP) NO.232 OF 2017

- i) Revision petition is allowed in view of Consent Term at Exhibit X, so also affidavit of authorized representative of complainant Nilkamal Limited – Mr.Bharat C. Shah.

- ii) Impugned judgment and order passed by the learned Sessions Judge, Dadra and Nagar Haveli, Silvassa, in Criminal Appeal No.5 of 2008 between the parties delivered on 6th September 2010 confirming the conviction of revision petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, and the resultant sentence and order of compensation is quashed and set aside. The revision petitioner / original accused is acquitted of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.
- iii) In view of disposal of revision petition, pending Criminal Application Nos.211 of 2017 and 2012 of 2017 stand disposed of.

ORDER IN

CRIMINAL REVISION APPLICATION (STAMP) NO.233 OF 2017

- i) Revision petition is allowed in view of Consent Term at Exhibit X, so also affidavit of authorized representative of complainant Nilkamal Limited – Mr. Bharat C. Shah.

- ii) Impugned judgment and order passed by the learned Sessions Judge, Dadra and Nagar Haveli, Silvassa, in Criminal Appeal No.6 of 2008 between the parties delivered on 6th September 2010 confirming the conviction of revision petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, and the resultant sentence and order of compensation is quashed and set aside. The revision petitioner / original accused is acquitted of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.
- iii) In view of disposal of revision petition, pending Criminal Application Nos.214 of 2017 and 2015 of 2017 stand disposed of.

(A. M. BADAR, J.)