

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 4509 OF 2017
WITH
WRIT PETITION NO. 4515 OF 2017

Nilesh Piyush Shah

..Petitioner

v/s.

Jayadeep Mahendra Parmar & Ors.

..Respondents

Mr. Abhishekh Deshmukh with Balvindra Singh for the Petitioner.

Mr. Jatin P Shah Advocate for the respondent.

Mrs. N.S.Jain APP for the Respondent-State.

Mrs. Shakuntala Piyuh Shah, mother of petitioner present in Court.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : NOVEMBER 07, 2017.**

P.C.

1. The petitioner herein had challenged the judgments dated 4th July, 2015 whereby the learned Sessions Judge, Gr. Mumbai dismissed the Revision Application Nos.544 of 2013 and 545 of 2013, and thereby confirmed the judgment dated 12th April, 2013 passed by the learned Metropolitan Magistrate, 14th Court, Girgaum, Mumbai in Criminal Case Nos. 710/SS/2009 and 706/SS/2009, holding the petitioner guilty of offence under Section 138 of Negotiable Instruments Act.

2. During the pendency of this petitions, the parties have arrived

at amicable settlement. They have placed on record the consent terms which reads thus:

“ 2. It is hereby agreed between the parties that, the entire claim of the Complainant is settled in a sum of Rs.13,00,000/- towards full and final settlement arising out of the present proceedings.

3. It is hereby agreed between the parties that the settled amount of Rs.13,00,000/- [Rupees Thirteen Lakhs Only] shall be paid by the Petitioner-accused to the Complainant above named as under : -

a] Rs. 3,75,000/- which was deposited by the Petitioner-accused pursuant to the directions given by the learned Sessions Court in Criminal Revision Application No.544 of 2013 as follows:-

Receipt No.	Date	Amount (Rs.)
0359404	07/09/2013	25,000/-
0359412	19/09/2013	3,00,000/-
0359579	30/10/2013	50,000/-

That the said amount is already withdrawn by the Complainant after following due process of law.

b] Rs. 50,000/- which was deposited by the Petitioner-accused pursuant to the directions given by the learned Sessions Court in Criminal Revision Application No.545 of 2013 after following due process

of law.

Receipt No.	Date	Amount (Rs.)
0359578	30/10/2013	50,000/-

That the said amount is also already withdrawn by the Complainant.

c] Now only an amount of Rs. 8,75,000/- that the sum of [Rupees Eight Lakhs Seventy Five Thousand Only] would be paid by the mother of the Petitioner-Accused on behalf of her Son i.e. Accused to the Complainant above named in Cash on the date of execution of this presents towards full and final settlement.

The Complainant hereby confirms the receipt of the same.

4. That immediately on execution of this consent terms and after the payments of the amount by the mother of the Accused to the Complainant in discharge of liability of her son as mentioned in para 3(c), the impugned orders dated 4.7.2015 passed by the Ld. Judge in Sessions Court for Greater Bombay in Criminal Revision Application No. 544 of 2013 and impugned order dated 4.7.2015 passed by the Ld. Judge in Sessions Court for Greater Bombay in Criminal Revision Application No. 545 of 2013 and judgment and order dated 12.4.2013 passed by Ld. Metropolitan Magistrate, 14th Court, Girgaon, Mumbai in CC No. 710/SS/2009 and CC No.706/SS/2009 and the conviction dated

12.4.2013 passed by the Metropolitan Magistrate 14th Court, Girgaon, Mumbai in CC No. 710/SS/2009 and in CC No. 706/SS/2009 are hereby set aside and in view thereof the Accused is hereby acquitted and released forthwith in both the cases bearing CC No. 710/SS/2009 and CC No.706 /SS/2009 in terms of this settlement.

5. Immediately upon the execution of this consent terms, the Accused relinquishes, waives his rights in respect of the Said amount of Rs. 4,25,000/- [3,75,000/- + 50,000/-] deposited by him in Id. Sessions Court as stated in aforesaid clause no. 3(a) & 3(b) in favor of the Complainant. He also undertakes that he will never claim the said amount in future which he has relinquished under whatsoever circumstances.

6. The Complainant states and declares that on the receipt of the remaining amount mentioned in Clause 3(c), the Complainant undertakes that he has received the full and final amount towards the aforesaid CC no. 710/SS/2009 and CC No. 706/SS/2009 filed before the Metropolitan Magistrate, 14th Court, Girgaon, and the Complainant will have no claim of whatsoever nature against the Accused and his family members in future.

7. Since the parties have entered into full and final settlement as aforesaid and the entire amount is paid by the mother of the Accused and after the receipt of the entire amount as mentioned aforesaid, the Complainant

hereby agrees that no Civil and/or Criminal liability would lie against the Accused.

8. That since amount mentioned in clause 3(c) is being paid by mother of the Accused on behalf of Accused and in discharge of liability of Accused, she is also made as confirming party to this consent terms. The mother of the Accused do hereby undertakes and declares that she will never claim that amount from Complainant under whatsoever circumstances.

9. That since facts, circumstances and settlement is Common in respect of overall and total liability, common consent terms are prepared in respect of all the Said Matters, although for the purpose of record separate consent terms are filed in the two Writ Petition Nos. 4509 of 2017 and 4515 of 2017.

10. All the Parties to these consent terms i.e. Accused, his mother Mrs. Shakuntalla Piyush Shah do hereby confirms and declares that they have signed and executed this application out of their own free will and consent and without any pressure, duress, force, coercion or influence of whatsoever nature of anyone, including of each other and in good health and sound state of mind. That since Accused is in custody his signature be dispensed with and on his behalf mother has signed the present consent terms.

11. In view of the above mentioned settlement, conviction order are set aside and as mentioned

aforesaid accused is acquitted in both the cases bearing CC no. 710/SS/2009 and CC No. 706/SS/2009 and be pleased to direct the Superintendent of Taloja Jail to acquit and release the Accused/Petitioner forthwith.”

3. The petitioner is undergoing sentence and is presently in Taloja jail. The learned Counsel for the petitioner submits that the petitioner has instructed him to enter into these Consent terms, and that the terms placed before the Court are agreeable to the petitioner and are drawn as per his instructions. The mother of the petitioner who is present before the Court has signed the consent terms and she also submitted that the Consent terms are drawn as per the instructions of the petitioner and that the same are agreeable to the petitioner.

4. In compliance with the consent terms, the mother of the petitioner has paid to the respondent cash of Rs.8,75,000/- towards full and final settlement. Both the parties have submitted that they have no further claim against each other in respect of the subject cheques.

5. In light of the above, the consent terms as well as the receipt is taken on record and collectively marked “X” for identification.

6. In view of the settlement arrived between the parties, the

offence is compounded, and both the writ petitions are disposed of by passing following order.

- i) The Orders of conviction and sentence, passed by the Metropolitan Magistrate, 14th Court, Girgaum, Mumbai dated 12th April, 2013 in CC.No.710/SS/2009 and 706/SS/2009 are hereby quashed and set aside.
- ii) The applicant is ordered to be released from jail, if his presence is not required in any other case.
- iii) Parties to act on an authenticated copy of this Order.

(ANUJA PRABHUDESSAI, J.)