

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

WRIT PETITION NO. 5077 OF 2015

Sanjay Rameshchandra Shah ..Petitioner

v/s.

The State of Maharashtra & Anr. ..Respondents

Mr.K.Thakker i/b. Prashant Parsuram Puria for the Petitioner.

Mr.M.R.Tidke, APP for the Respondent-State.

Mr.Rohit Udani, Respondent No.2 present in the Court.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : NOVEMBER 29, 2017.**

P.C.

1. The petitioner herein has challenged the order dated 16th January, 2013 whereby the learned Addl. Sessions Judge, City Civil & Sessions Court, Gr. Bombay has dismissed Criminal Appeal No.136 of 2011 thereby confirming the judgment dated 19th January, 2011 passed by the learned Metropolitan Magistrate, 14th Court, Girgaum, Mumbai convicting and sentencing the petitioner herein for the offence punishable under Section 138 of the Negotiable Instruments Act.

2. The learned Counsel for the petitioner submits that the petitioner and the respondent has arrived at out of Court settlement and in terms of the said settlement, the petitioner had agreed to pay total amount of Rs.3,00,000/- to the respondent. The petitioner had earlier deposited amount of Rs.82,000/- before the Metropolitan

Magistrate, 14th Court, Girgaum, Mumbai. The petitioner had agreed that the respondent should be permitted to withdraw the said amount. The petitioner has also paid the balance amount of Rs.2,18,000/- to the respondent by pay order dated 27th November, 2015 and Demand draft dated 5th December, 2015.

3. She has brought to my notice affidavit-Exhibit E filed by the respondent no.2 wherein he has acknowledge that the matter was finally settled. The contents of the affidavit read thus:

“1) I say that I had filed original Criminal Case bearing No.6166/S/2005 in the Girgaum Court, Mumbai against Petitioner for offence punishable u/s.138 of the Negotiable Instruments Act. In the above matter, Petitioner had issued cheque in my favour in the sum of Rs.3,00,000/- (Rupees Three Lac Only) wherein the learned Metropolitan Magistrate, 14th Girgaum Court, Mumbai, by its judgment and Order dated 19/01/2011 was pleased to convict the petitioner directing him to suffer simple imprisonment for two months and to pay fine of Rs.4,10,000/- wherein Petitioner was directed to pay Rs.4,00,000/- as compensation to me.

2) I say that against the said Order and Judgment dated 19/02/2011, the Petitioner had preferred Criminal Appeal No. 136 of 2011 before the Hon'ble Sessions Court, Mumbai. The said Criminal Appeal No. 136 of 2011 came to be dismissed/rejected by an Order dated 16/01/2013 passed by Hon'ble Sessions Judge presiding

in C.R.No.21, Sessions Court, Mumbai.

3) I say that thereafter, Petitioner approached me wherein we have amicably decided to finally settled the above matter in the aggregate sum of Rs.3,00,000/- (Rupees Three lac only) to be paid by petitioner to me. The Petitioner had deposited Rs.82,000/- (Rupees Eighty Two Thousand Only) in the 14th Court, Girgaum, Mumbai Court in C.C.No.6166 of 2005, which has been withdrawn by me. Petitioner has today paid me balance amount of Rs.2,18,000/- (Rupees Two lac Eighteen Thousand Only) by pay orders details of which are given herein below

a) Pay Order No.098312 dtd 27/11/2015 for Rs.1.00,000/- drawn in my favour on State Bank of Hyderabad.

b) Demand Draft No. 489669 dt.5.12.2015 in the sum of Rs.1,18,000/- drawn in my favour on United Bank of India.

4) I say and confirm that the above matter being C.C.No. 6166/2005 between the petitioner and me stands settled and compounded. I have no claim against the petitioner in the above matter.

5) I vide this affidavit give my No Objection before this Hoourable Court for quashing and setting aside Judgment and Order dated 19/01/2011 passed by the ld. Metropolitan Magistrate, 14th Girgaum Court, Mumbai in C.C.No.6166 of 2005 and Order dated 16/01/2013 in

Criminal Appeal No.136 of 2011 passed by the Hon'ble Sessions Court, Mumbai, against the petitioner.”

4. The respondent no.2 confirms having received Rs.3,00,000/- as per the settlement arrived between them. The respondent no.2 who is present before the Court has accepted that the said affidavit was filed by him. Considering the fact that the matter has been amicably settled between the parties, leave is granted to compound the offence.

5. Hence conviction and sentence imposed by judgment dated 19th January, 2011 by the Metropolitan Magistrate, 14th Court, Girgaum, Mumbai and confirmed by judgment dated 16th January, 2013 by the learned Addl. Sessions Judge, City Civil and Sessions Court, Gr. Mumbai is set aside.

6. Petitioner to pay costs of Rs.20,000/- to the State Legal Services Authority within a period of two weeks from today.

(ANUJA PRABHUDESSAI, J.)