

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL REVISION APPLICATION NOS.13, 14 & 15 OF
2018

Jayesh E. Shet, Presently in
Custody at Central Jail
Colvale .. Petitioner

Versus

The VPK Urban Co-op Credit
Society Ltd. Rep. By Legal
Officer, Ratan S. Amonkar and Anr... Respondent

Shri Pavitrans A. V., Advocate for the petitioner.

Shri S. P. Munj, Advocate for the respondent no.1.

Coram :- C. V. BHADANG, J.

Date :- 2nd May, 2018

ORAL ORDER :

All these Criminal Revision Applications are between same parties and as such, they are being disposed of by this common order.

2. The first respondent Credit Society had instituted three separate complaints under Section 138 of the Negotiable Instruments Act, 1881 (the Act, for short), which pertained to dishonour of three cheques, issued by the petitioner. The learned

Magistrate convicted the petitioner for the offence punishable under Section 138 of the Act in Criminal Case No.205/NIA/2013/C and he was sentenced to undergo Simple Imprisonment for 9 months and to pay compensation of Rs.3,10,000/-. The learned Magistrate further convicted the petitioner for the offence punishable under Section 138 of the Act in Criminal Case No.530/NIA/2009/C and he was sentenced to undergo Simple Imprisonment for 8 months and to pay compensation of Rs.1,00,000/-. The learned Magistrate also convicted the petitioner for the offence punishable under Section 138 of the Act in Criminal Case No.130/NIA/2011/C and he was sentenced to undergo Simple Imprisonment for 10 months and to pay compensation of Rs.4,00,000/-. The judgments of the conviction and sentence passed by the learned Magistrate, have been confirmed by the learned Additional Sessions Judge in appeals. Hence, these Revision Applications.

3. It is undisputed that the petitioner has deposited the compensation as awarded in all the three cases. The petitioner has also deposited an amount of Rs.25,000/- with the Goa State Legal Services Authority by way of remorse. The learned Counsel for the first respondent has produced on record a letter dated 21/03/2018 from the Deputy General Manager of the first

respondent, which is taken on record and marked 'X' for identification. The Deputy General Manager has expressed no objection to settle/ compound the matter, if the amount of compensation deposited before this Court is released in favour of the first respondent.

4. The Hon'ble Apex Court in the case of ***Meters and Instruments Pvt. Ltd and Another Vs. Kanchan Mehta;*** (2018)1 SCC 560, had an occasion to consider the object and scheme behind introduction of Section 138 in its present form in the Negotiable Instruments Act. The Supreme Court has found that the offence under Section 138 of the Act is primarily a civil wrong and the proceedings are essentially compensatory in nature, punitive element being mainly with the object of enforcing compensatory element. It has been held that the Court may close the proceedings if the accused deposits the amount with arrears having regard to the overall circumstances, including the cheque amount etc. It has been held that although compounding at the initial stage has to be encouraged, but it is not barred at a later stage, subject to appropriate compensation as may be found acceptable to the parties or the Court. It has further been held that though compounding requires consent of both the parties even in the absence of such consent, the Court, in the interest of

justice on being satisfied that the complainant has been duly compensated, can in its discretion, close the proceedings and discharge the accused. (See para 18 of the judgment).

5. On hearing the learned Counsel for the parties and having regard to the fact that the first respondent has been adequately compensated, the following order is passed :

- (i) The Criminal Revision Applications are allowed.
- (ii) The conviction and sentence awarded to the petitioner is hereby set aside.
- (iii) The petitioner is acquitted of the offence punishable under Section 138 of the Act.
- (iv) The bail bonds of the petitioner stand cancelled.
- (v) The amount of compensation deposited before the learned Magistrate, shall be paid to the first respondent along with interest, if any.
- (vi) Criminal Revision Applications are disposed of in the aforesaid terms.

C. V. BHADANG, J.

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