

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 14 OF 2017

VIJAYKUMAR KASHINATH FADKE., ... Petitioner

Versus

**BANK OF INDIA, REP. BY ITS BRANCH
MANAGER AND ANR.,** ... Respondents

Mr. Rohan Pandurang Desai, Advocate for the petitioner.
Mr. Siddharth Samant, Advocate for the respondent no.1.

Coram:- PRITHVIRAJ K. CHAVAN, J.

Date:- 6th February 2018

P.C.

Petitioner was convicted by an order passed by the learned Judicial Magistrate, First Class, Margao in Criminal Case No.228/OA/NI/2007/D for the offence under Section 138 of the Negotiable Instruments Act and was sentenced to undergo simple imprisonment for two months and to pay compensation of Rs.40,000/-. In default he was directed to undergo simple imprisonment for two months.

2. A pursis filed on behalf of the petitioner is taken on record. It is stated that the Petitioner has already paid the entire amount of compensation by way of two demand drafts.

(i) Demand draft bearing No.364649 dated 30.11.2017 for Rs.18,000/-.

(ii) Demand draft bearing No.342989 dated 12.1.2018 for Rs.22,000/-.

3. It is stated that these demand drafts have already been handed over to the respondent no.1. The learned Counsel for the respondent no.1 admits receipt of the aforesaid two demand drafts. Thus, entire amount of compensation has been stated to be paid to the respondent no.1.

4. In view of the law laid down by the Hon'ble Supreme Court in case of M/s Meters and Instruments Private Limited and Anr Vs Kanchan Mehta, (2017) 0 AIR SC 4594, it is held that though compounding requires consent of both the parties, even in the absence of such consent, Court, in the interest of justice, being satisfied that the complainant has been duly compensated, can in its discretion close the proceedings and discharge the petitioner.

5. In view of aforesaid facts, Revision needs to be allowed. Petitioner stands acquitted of the offence punishable under Section 138 of the Negotiable Instruments Act by setting aside order of conviction passed by learned JMFC in the Criminal Case No.228/OA/Ni/2007/D and confirmed by the learned Lower Appellate Court in Criminal Appeal No.67/2015 dated 27.2.2017. Bail bonds stands cancelled.

6. 15% of the cheque amount shall be deposited in favour of Goa State Legal Services Authority in view of the ratio laid down by the Hon'ble Supreme Court in the case of Damodar Prabhu Vs Sayyed Babalal H, (2010)5 SCC 663. Petitioner shall deposit the said amount within 2 days.

7. In view of the aforesaid facts, Revision Petition stands disposed of.

PRITHVIRAJ K. CHAVAN, J.

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