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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

REVISION APPLICATION No. 599 OF 2017

Gangadhar Narayan Mahindrakar ... Applicant
Vs.
Krishnath Sankar Jadhav & Ors. ... Respondents

Mr. Ashok B. Tajane, for the Applicant.

Mrs. S. S. Kaushik, APP for the Respondent - State.

CORAM : PRITHVIRAJ K. CHAVAN, J.
DATE : AUGUST 6, 2018

PC :-

1. Applicant who is the original accused prayed for the following reliefs:

“(a) The judgment and order dated 06.03.2010 passed in STC No. 9671 of 2003 by the learned IIIrd JMFC Solapur, the judgment and order dated 28.2.2017 passed by the Ld. Additional Sessions Judge Solapur in Criminal Appeal No. 20 of 2010 filed U/s. 374 of Cr.P.C. as well as the order dated 25.9.2017 passed in Criminal M. A. No. 89 of 2017 rejecting the review filed U/s. 362 Cr.P.C. as well as compromise between the accused and the complainant dated 25.09.2017 passed by the Additional Sessions Judge Solapur be quashed and set aside.

(b) The present Revision Application be disposed of in

view of compromise pursis dated 11.08.2017 and the applicant be acquitted from STC No. 9671 of 2003 filed in the Court of Judicial Magistrate First Class Solapur.

- (c) Pending the hearing and final disposal of the present Criminal Revision Application the execution, operation and effect of judgment and order dated 06.03.2010 passed in STC No. 9671 of 2003 by the learned IIIrd JMFC Solapur, the judgment and order dated 28.02.2017 passed by the Ld. Additional Sessions Judge Solapur in Criminal Appeal No. 20 of 2010 filed U/s. 374 of Cr.P.C. as well as the order dated 25.09.2017 passed in Criminal M.A. No. 89 of 2017 rejecting the review filed U/s 362 of Cr.P.C. as well as the compromise between the accused and the complainant dated 25.09.2017 passed by the Additional Sessions Judge Solapur, be stayed.”

2. Heard the learned counsel for the Applicant. The Respondent No. 1 / original complainant though duly served, remained absent. None appeared for the said respondent.

3. Briefly stated, the Applicant came to be convicted by the learned J.M.F.C. Solapur of the offence punishable under S. 138 Negotiable Instruments Act, 1881 and sentenced him to undergo simple imprisonment for three months as well as fine of Rs. 40,000/- in default to suffer simple imprisonment for one

month, by his judgment and order dated 6th March, 2010 passed in S.T.C. No. 9671 of 2003. An appeal preferred by the Applicant before the Sessions Court, Solapur bearing Criminal Appeal No. 20 of 2010 also came to be dismissed by a judgment and order dated 28th February, 2017, *inter alia* directing the Applicant to appear before the trial court within 15 days.

4. The Applicant, however, moved an application under S. 362 Cr.P.C. for review of the order dated 28th February, 2017. The learned Sessions Judge by the impugned order dated 25th September, 2017 rejected the said application *inter alia* observing that Section 362 Cr.P.C. does not permit review by a court which has signed the judgment or final order, disposing of a case, except to correct a clerical or arithmetical error. Learned Sessions Judge has also observed that since review application is not tenable, the compromise entered into between the parties also cannot be accepted.

5. As a matter of fact, once the parties have entered into an amicable settlement, it is expected of the courts to bring

an end to the litigation without indulging into other technicalities.

6. My attention is drawn to Exhibit “E” (page 37), which is a joint compromise pursis, tendered before the Sessions Judge by the parties, wherein the parties have clearly contended that complainant / Respondent No. 1 has received Rs.40,000/-, and therefore, the complainant did not wish to prosecute the complaint, *inter alia* praying that the accused be acquitted of the offence. There is an endorsement of the learned Sessions Judge over the said pursis, which is also signed by the parties and their respective counsel. There is also a reference in the order dated 25.9.2017 passed by the Sessions Judge about the said compromise.

7. Having taken note of the said facts, the matter can be finally disposed of in view of the said compromise entered into between the parties, even though Respondent No. 1 failed to appear before this Court.

8. The Supreme Court in the case of ***Damodar S.***

Prabhu, Appellant Vs. Sayed Babal H., Respondent¹ discussed the scheme and scope of Section 138 of the Negotiable Instruments Act, 1881. Paragraph 24 and 25 of the said judgment reads thus:

“24. We are also conscious of the view that the judicial endorsement of the above quoted guidelines could be seen as an act of judicial law-making and therefore an intrusion into the legislative domain. It must be kept in mind that Section 147 of the Act does not carry any guidance on how to proceed with the compounding of offences under the Act. We have already explained that the scheme contemplated under Section 320 of the CrPC cannot be followed in the strict sense. In view of the legislative vacuum, we see no hurdle to the endorsement of some suggestions which have been designed to discourage litigants from unduly delaying the composition of the offence in cases involving Section 138 of the Act.

25. The graded scheme for imposing costs is a means to encourage compounding at an early stage of litigation. In the status quo, valuable time of the Court is spent on the trial of these cases and the parties are not liable to pay any Court fee since the proceedings are governed by the Code of Criminal Procedure, even though the impact of the offence is largely confined to the private parties. Even though the imposition of costs by the competent court is a matter of discretion, the scale of costs has been suggested in the interest of uniformity. The competent Court can of course reduce the costs with regard to the specific facts and

1 (2010) 5 Supreme Court Cases 663

circumstances of a case, while recording reasons in writing for such variance. Bona fide litigants should of course contest the proceedings to their logical end.”

9. In view of clear observation as above, it would be just and proper to allow the parties to settle the matter by quashing the impugned order and judgment of conviction, passed by the J.M.F.C. Solapur dated 6th March, 2010 in S.T.C. No. 9671 of 2003, and the order of Additional Sessions Judge, Solapur dated 25th September, 2017 passed below Exhibit 1 and Exhibit 6 in Criminal Misc. Application No. 89 of 2017.

10. However, in view of the guidelines issued by the Supreme Court in the above judgment, if the compounding is made before the Sessions Judge or the High Court in revision or appeal, such compounding can be allowed directing the accused to pay 15% of the cheque amount by way of costs. Since the compromise came to be filed before the learned Sessions Judge, Solapur, following order is expedient.

(i) The accused is acquitted of the offence punishable

under Section 138 of the Negotiable Instruments Act, 1881, subject to his depositing 15% of the cheque amount, by way of costs with the District Legal Services Authority at Solapur. Needless to mention that this order of acquittal would be effective only after deposit of the amount of costs by the accused with the District Legal Services Authority at Solapur;

- (ii) His bail bond stands cancelled;
- (iii) Criminal revision application stands disposed of in the aforesaid terms.

Sd/-
[PRITHVIRAJ K. CHAVAN, J.]

Vinayak Halemath