

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION No. 3 OF 2002

Shaligram Shankar Bendale

...Applicant

Vs.

State of Maharashtra and Anr.

...Respondents

Mr. Siddesh Pilankar i/b. Uday P. Warunjikar for Applicant

Mr. A.B. Borwankar for Respondent No.2

Mr. S.S. Pednekar APP for State

CORAM : PRAKASH D. NAIK, J.

DATE : 16 JANUARY, 2018.

P.C. :-

1. The Applicant is the Original Accused, who has been convicted for an offence punishable under Section 138 of the Negotiable Instruments Act and was sentenced to suffer S.I. for one month and was directed to pay fine of Rs.5,200/- and, in default, to suffer S.I. for 7 days. The said judgment and order was passed on 27.10.1998. In pursuant to that, the Applicant had preferred an appeal before the Sessions Court viz. Criminal Appeal No. 164 of 1998, which has been dismissed vide judgment and order dated 31st December, 2001.

2. Learned Advocate for both the parties submitted that there has been amicable settlement between the Applicant and the legal heirs of Respondent No.2. Respondent No.2 has expired on 19th February, 2006. Learned Advocate submitted that civil proceedings were initiated by the

parties has been disposed of on account of the settlement between the parties. The consent terms were filed in the Writ Petition No. 8088 of 2006 preferred by the Accused. The xerox copy of the said consent terms is tendered in the Court. In paragraph 2 of the said consent terms, it is stated that the legal heirs of Respondent No.2 viz. Smt. Kamal Vasant Kalbhor and Sameer Vasant Kalbhor had undertaken to withdraw all the civil / criminal proceedings filed against the accused. It is further stated that the Accused had agreed to withdraw the Criminal Revision Nos.2 of 2002, 3 of 2002 and 4 of 2002, which are pending in this Court.

3. Learned Advocate for the parties have also placed on record the application made in darkhast proceedings and the order passed therein allowing the withdrawal of the darkhast proceedings on account of settlement between the parties. Both the documents are taken on record and marked 'X' and 'X-1' for the purpose of identification. One of the legal heirs viz. Sameer Vasant Kalbhor is present in the Court, who has confirmed the settlement. Learned Advocate for the parties submits that on account of the settlement between both the parties, the judgment and order convicting the Applicant may be quashed and set aside by allowing the parties to compound the said offence. It is also submitted that on account of the consent terms, the entire claim of Respondent no.2 and his legal heirs have been settled and there are no further claim.

4. Considering the fact that the parties have amicably settled the dispute and also the fact that the offence under the provisions of Section 138 of the Negotiable Instruments Act is a compoundable offence and looking into the fact that the civil proceedings initiated by the parties have also been withdrawn by filing the consent terms, the revision application can be allowed by compounding the offence punishable under Section 138 of the Negotiable Instruments Act. In view of the consent terms, the conviction awarded to the Applicant can be set aside and on account of compounding the offence, the Applicant can be acquitted under the charge framed under section 138 of the Negotiable Instruments Act. Hence, I pass the following order:

ORDER

(i) The impugned judgment and order dated 27.10.1998 passed by the Learned JMFC, Court No.5, Pune convicting the Applicant for an offence punishable under Section 138 of the Negotiable Instruments Act as well as the judgment and order dated 31st December, 2001 passed by the Sessions Court at Pune in Criminal Appeal No. 164 of 1990 are quashed and set aside by compounding the offence punishable under section 138 of the Negotiable Instruments Act in accordance with the consent terms and the Applicant is acquitted of the said offence.

(ii) Criminal Revision Application No. 3 of 2002 stands disposed of.

[PRAKASH D. NAIK, J.]