

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

**CRIMINAL REVISION APPLICATION NO.24 OF 2016
WITH
CRIMINAL BAIL APPLICATION NO.17 OF 2016**

Jitesh Madhusudan Soni

.. Applicant

Vs.

The State of Maharashtra & Anr.

.. Respondents

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Mr.P.C. Das i/b. M/s.P.C. Das & Associates, Advocate for the Applicant.

Mr.Swapnil S. Pednekar, APP for the Respondent – State.

Mr.Umesh V. Mohite, Advocate for Respondent No.2.

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CORAM : PRAKASH D. NAIK, J.

DATED : JANUARY 5, 2018.

P.C. :

Not on Board. Production of the Revision application is allowed at 3:00 p.m.

2 The applicant has preferred this application challenging the judgment and order dated 11th November, 2014, passed by the learned Metropolitan Magistrate 43rd Court, Borivali, Mumbai in C.C. No.4302590/SS/2008 convicting the applicant for the offence punishable under Section 138 of the Negotiable Instrument Act, 1881, as well as the judgment and order dated 22nd September, 2015, passed by the Adhoc District

Judge & Additional Sessions Judge, City Civil & Sessions Court, (Borivali Division), Dindoshi, in criminal Appeal No.147 of 2014.

3 The applicant was sentenced to undergo simple imprisonment of two months and to pay compensation of Rs.5,00,000/- to the complainant and in default, to undergo simple imprisonment for three months.

4 Learned advocate for the respective parties submitted that the applicant and respondent no.1 had arrived at settlement. Consent Terms in relation to the settlement are signed by both the parties. In the said Consent Terms, it is stated that during the pendency of the criminal Revision Application, the parties have amicably settled the dispute. It is also stated that the parties have agreed to settle their dispute and all matters arising there from for a sum of Rs.7,00,000/- be paid by the applicant to the complainant as full and final settlement to all claims of her in respect to which claims the complainant has filed the subject complaint. Consent Terms further states that the applicant - accused will hand over the Demand Draft dated 6th January, 2017, for an amount of Rs.3,75,000/- and Demand Draft dated 6th January, 2017, for the balance amount of Rs.2,00,000/- drawn in favour of respondent no.2

5 During the course of the hearing of this application, the applicant has handed over the aforesaid Demand Draft to the complainant who is present in Court. Both the parties who are present in the Court has confirmed that there is a settlement between both the parties. The Consent Terms further stipulates that the amount of Rs.1,25,000/- which has been deposited by the applicant - accused before the appellate Court i.e. Sessions Court, Dindoshi, Mumbai, will be withdrawn by the applicant from the said Court within a period of two weeks after the final settlement of the dispute and the said amount shall be handed over to the complainant by way of demand draft within one week from the withdrawal of the said amount. The applicant who is present in Court has undertaken to withdraw the said amount of Rs.1,25,000/- and to hand over the said amount to the complainant as stated herein above.

6 In view of the Consent Terms, learned counsel for the complainant submitted that the proceedings can be compounded and the judgment and order of conviction can be set aside.

7 Since the offence punishable under Section 138 of Negotiable Instruments Act, 1881, is compoundable vide Section 147 of Negotiable Instruments Act, 1881, and, considering the Consent Terms referred to hereinabove, the judgment and order of conviction passed by the trial Court and which has been confirmed by the Appellate Court can be set aside as the parties are compounding the offence.

8 In view of the above, I pass the following order:

:: ORDER ::

- (i) Revision Application No.24 of 2016, is allowed;
- (ii) The judgment and order dated 11th November, 2014, passed by the learned Metropolitan Magistrate 43rd Court, Borivali, Mumbai in C.C. No.4302590/SS/2008, convicting the applicant and sentencing him to imprisonment for two months and further directing him to pay compensation of Rs.5,00,000/- as well as the judgment and order passed by the judgment

and order dated 22nd September, 2015, passed by the Adhoc District Judge & Additional Sessions Judge, City Civil & Sessions Court, (Borivali Division), Dindoshi, in criminal Appeal No.147 of 2014 are quashed and set aside. The applicant is acquitted of the offence punishable under section 138 of the Negotiable Instruments Act, 1881;

- (iii) The applicant is directed to withdraw the amount of Rs.1,25,000/- deposited by him before the Sessions Court, Dinodshi, Mumbai, in Criminal Appeal No.147 of 2014, within a period of two weeks from today and he shall hand over the said amount by way of Demand Draft within a period of one week after withdrawal of the said amount;
- (iv) Criminal Revision Application stands disposed of;

- (v) As the Criminal Revision Applicant No.24 of 2016 stands disposed of, Criminal Application No.17 of 2016 also stands disposed of accordingly.

(PRAKASH D. NAIK, J.)