

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

CRIMINAL APPLICATION NO.659 OF 2017

Dipesh Sohanlalji Jain

... Applicant

Vs

The State of Maharashtra & Anr.

... Respondents

Ms. Anjali B. Mannapalli for the Applicant.

Mr. Vinod Chate, APP for the Respondent No.1 - State.

Mr. Ramesh jain for the Respondent No. 2.

CORAM : REVATI MOHITE DERE, J.

DATE : 06.02.2018

P.C. :

1. Heard the learned counsel for the parties.
2. Both, learned counsel for the Applicant as well as the learned counsel for the Respondent No. 2, state that the parties have amicably settled their dispute and have entered into consent terms. The learned counsel have tendered the consent terms entered into between the parties. The said consent terms as well as affidavit-cum-no objection of the Respondent No. 2 (Complainant) are taken on record and marked 'X' (colly).
3. Learned counsel for the Respondent No.2 on instructions states, that the Respondent No.2 has received a sum of Rs.2,50,000/- as

and by way of full and final settlement in the said case, and as such the Respondent No. 2 has no objection, if the impugned judgment and order of conviction and sentence passed by the Trial Court is quashed and set aside and if the Applicant is acquitted of the offence punishable under Section 138 of the Negotiable Instrument Act. Learned counsel for the Respondent No. 2 has identified the signature of the Respondent No. 2, as it appears on the consent terms, as well as on the affidavit-cum-no objection. He states that the Respondent No. 2, could not remain present today, as he is indisposed. He, however, requests that appropriate orders may be passed on the basis of the consent terms and affidavit-cum-no objection.

4. Perused the papers. The Applicant has been convicted for the offence punishable under Section 138 of the Negotiable Instrument Act, vide Judgment and Order dated 03.12.2016 passed by the learned 4th Joint Civil Judge (J.C.J.J) and Judicial Magistrate First Class (J.M.F.C) Thane, in S.C.C. No. 9121/2015 and sentenced to suffer Rigorous Imprisonment for 3 months and to pay fine of Rs.2 lakhs, in default to suffer Simple Imprisonment for one month. Being aggrieved by the Judgment and Order of conviction and sentence, the applicant herein, filed an Appeal in the Sessions Court, alongwith an application for

condonation of delay. The learned Sessions Court vide order dated 06.04.2017 was pleased to condone the delay, by imposing certain costs on the Applicant, which were to be paid within a certain time frame. As the Applicant failed to pay the costs, the Appeal came to be dismissed. The Applicant has challenged the said order of dismissal of his Appeal, in this present Application.

5. However, in the meantime, during the pendency of this Application, the parties have settled their dispute and have entered into consent terms. In view of the consent terms entered into between the parties and the affidavit-cum-no objection of the Respondent No.2, the Application is allowed and the Judgment and Order dated 03.12.2016 passed by the learned Judicial Magistrate First Class, Thane in SCC No. 9121/2015 is quashed and set aside and the Applicant is acquitted of the offence punishable under Section 138 of the Negotiable Instrument Act.

6. Application is disposed of in the aforesaid terms.

7. All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)