

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.311 OF 2018
WITH
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IN
CRIMINAL REVISION APPLICATION (STAMP) NO.328 OF 2018
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Manoj Mandhanian

Applicant

versus

The State of Maharashtra and another

Respondents

Mr.Datta Mane for applicant.

Mr.Adithya Iyer I/by Prasad Dhalwalkar for respondent no.2.

Mr.A.R.Patil, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 16th July 2018

PC :

1. The revision applicant is convicted for offence u/s 138 of Negotiable Instruments Act, 1881 by judgment and order dated 13th January 2012 passed by learned Metropolitan Magistrate, 7th Court, Dadar, Mumbai in CC No.3784/SS/2011. The applicant was sentenced to suffer simple imprisonment for four months and was further directed to pay compensation of Rs.15,50,000/- to the complainant, and in default to suffer simple imprisonment for six months. The applicant preferred Criminal Appeal No.30 of 2012 before the Sessions Court challenging the judgment and order of conviction. The appeal has been dismissed on 18th June 2013. It is submitted by learned counsel representing both the parties that there

is amicable settlement between the parties. The consent affidavit filed by the complainant stating that the matter has been settled, is tendered in the Court, which is taken on record and marked "X" for identification. The judgment of Appellate Court as stated above, was passed on 18th June 2013. There is delay of about five years in preferring Criminal Revision Application (Stamp) No.328 of 2018. The applicant has, therefore, filed Criminal Application No.311 of 2018 for condonation of delay.

2. It is submitted that the applicant was abroad for all these years and after returning to India he learnt about dismissal of his appeal. It is also submitted that the applicant is suffering from cancer which is at the advanced stage. In between, the daughter of applicant has also passed away. It is, thus, prayed that the delay be condoned.

3. Considering the reasons assigned hereinabove and also considering the fact that matter has been settled between parties, the delay in filing revision application is required to be condoned.

4. In the affidavit tendered by the complainant who is present in the Court, it is stated that the matter has been settled for a sum of Rs.11,50,000/-. It is also stated that Rs.11,50,000/- is received by the company at whose instance the complaint was filed. The board resolution authorizing respondent no.2 to complete all the formalities for allowing this revision application is annexed to the affidavit. The authorized representative of respondent no.2 has confirmed that the parties have settled the dispute and that respondent no.2 has no objection for setting aside the conviction on account of settlement.

5. It is also submitted that during pendency of the appeal before the Sessions Court, the revision applicant had deposited Rs.4,00,000/- in the Sessions Court, which may be allowed to be withdrawn by the revision applicant.

6. Taking into consideration the fact that parties have arrived at amicable settlement and in the light of Section 148 of the Negotiable Instruments Act and since the complainant has received Rs.11,50,000/- from the revision applicant as full and final settlement, there is no embargo in setting aside the order of conviction and acquit the accused. Hence, I pass following order :

ORDER

- (i) Criminal Application No.311 of 2018 is allowed and delay in filing the revision application is condoned;
- (ii) Criminal Revision Application (Stamp) No.328 of 2018 is allowed;
- (iii) In view of settlement between the parties, the impugned judgment and order dated 13th January 2012 passed by learned Metropolitan Magistrate, 7th Court, Dadar, Mumbai in CC No.3784/SS/2011 as well as judgment and order dated 18th June 2013 passed by Ad-hoc Additional Sessions Judge, Sewree, Mumbai in Criminal Appeal No.30 of 2012, is set aside and the revision applicant is acquitted;
- (iv) The amount of Rs.4,00,000/- deposited by the revision applicant before the Sessions Court in Criminal Appeal No.30 of 2012, is allowed to be withdrawn by applicant with interest, if any, accrued thereon;

- (v) The advocate for respondent no.2 is permitted to file his vakalatnama during the course of the day;
- (vi) Criminal Revision Application (Stamp) No.328 of 2018 as well as Criminal Applications Nos.311/2018, 312/2018 and 313/2018, stand disposed off.

(PRAKASH D. NAIK, J.)

MST