

CRIMINAL REVISION APPLICATION NO.483 OF 2016

1. Not on board. Papers are produced at the instance of both the parties to the revision since the dispute has been settled.
2. The revision applicant was convicted for offence under Section 138 of Negotiable Instruments Act by judgment and order dated 3rd November 2014 passed by learned Metropolitan Magistrate, 6th Court, Mazgaon, Mumbai in CC No.615214/SS/2012. The accused no.2 being responsible partner was sentenced to suffer simple imprisonment for six months. The accused nos.1 and 2 were directed to pay Rs.5,24,129/- along with interest @ 9% p.a. from 10th September 2012 till actual realization and costs of Rs.13,600/- was also directed to be paid to the complainant. Pursuant to that, the revision applicant preferred Criminal Appeal No.1115 of 2014 before the Court of Sessions, Mumbai. The said appeal was dismissed vide judgment dated 9th August 2016.

3. During pendency of this revision application, the parties have arrived at amicable settlement. The consent terms executed between the parties were tendered in the Court. The said consent terms dated 9th August 2018 are taken on record and marked "X" for identification. Applicant no.2 and the representative of respondent no.1-complainant who had filed the complaint before the Trial Court, are present in the Court. They have confirmed the consent terms. It is submitted that the complainant has no objection for setting aside the conviction in terms of the clauses stipulated in the consent terms. As per the consent terms, the parties have settled the dispute for Rs.5,24,129/-. It is submitted that Rs.2,50,000/- has been deposited by the revision applicant before the Trial Court, which is agreed to be withdrawn by the respondent no.1-complainant. It is agreed between the parties that the balance amount shall be paid in installments as stated in the consent terms. In paragraph 5 of the consent terms, it is stated that if the applicants make any default in honouring the cheques stipulated in the consent terms on its due dates, in that event the respondent no.1 shall issue a written notice calling upon the applicants to pay the said installments within fifteen days and in the event of non compliance of the notice, the respondent no.1-complainant shall be at liberty to enforce the judgment and order dated 3rd November 2014 passed by the Trial Court.

4. It is also pointed out that the name of the complainant company which was earlier named as M/s.Asarco Steel Private Limited has been changed to M/s.Shah Steel Impex Private Limited and incorporation certificate to that effect is annexed to the consent

terms. Taking into consideration that parties have amicably settled the dispute and in view of the consent terms and that the complainant has no objection for setting aside the conviction, there is no impediment in allowing the request for compounding the offence and setting aside the conviction.

5. In view of the above, I pass following order :

ORDER

(i) Impugned judgment and order dated 3rd November 2014 passed by learned Metropolitan Magistrate, 6th Court, Mazgaon, Mumbai in CC No.615214/SS/2012 convicting the revision applicants for offence u/s 138 of Negotiable Instruments Act, and the judgment and order dated 9th August 2016 passed by the Sessions Court for Greater Bombay in Criminal Appeal No.1115 of 2014, are set aside in view of the settlement and consent terms and parties are allowed to compound the offence. The revision applicants are acquitted of the offence u/s 138 of Negotiable Instruments Act;

(ii) The respondent no.1-complainant is allowed to withdraw Rs.2,50,000/- deposited by the applicants before the Trial Court in the new name of respondent no.1 viz M/s.Shah Steel Impex Private Limited;

(iii) In the event there is failure on the part of applicants to honour the post dates cheques, the default clause mentioned in consent terms would come into operation;

(iv) In view of the above, Criminal Revision Application No.483 of 2016 and Criminal Application No.380 of 2017 stand disposed off;

(v) The Trial Court to act on authenticated copy of this order issued by registry of this Court.

(PRAKASH D. NAIK, J.)

MST