

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.628 OF 2016
IN
CRIMINAL APPEAL NO.36 OF 2013
WITH
CRIMINAL APPLICATION NO.633 OF 2016
AND
CRIMINAL APPLICATION NO.634 OF 2016

Mr.Mohammed Ashfaq Shaikh .. Applicant

Versus

1. Mahadev Prasad Gupta & Anr. .. Respondents

Mr.Santosh Kumar Singh i/b J.B.Chaudhari, Advocate for the applicant.

Mr.Mrityunjay B. Barai for Respondent No.1.

Mr.P.H. Gaikwad, APP for the Respondent No.2 State.

CORAM : PRAKASH D. NAIK, J.

DATED : 08 FEBRUARY, 2018

P.C. :

1. The applicant was prosecuted for the offence under Section 138 of the Negotiable Instruments Act. The learned Metropolitan Magistrate, 43rd Court, Borivali, Mumbai vide common judgment and order dated 3rd May 2013 passed in C.C. Nos.2284/SS/2009 and 2285/SS/2009 convicted the applicant for

the offence punishable under Section 138 of the Negotiable Instruments Act and he was sentenced to suffer simple imprisonment for six months. The applicant was also directed to pay an amount of Rs.1,10,000/- to the complainant by way of compensation.

2. The applicant challenged the aforesaid judgment and order before the Sessions Court by preferring Criminal Appeal No.36 of 2013. The said appeal was dismissed by the Sessions Court by judgment and order dated 18th August 2016.

3. During pendency of this Revision Application, the parties have settled the dispute. The Consent Terms dated 8th February 2018 executed by the applicant and the respondent/complainant are tendered. Both the parties have confirmed the contents of the Consent Terms and stated that they have amicably settled the dispute. The Consent Terms are taken on record and marked as 'X' for identification. In accordance with the Consent Terms, the parties have agreed to settle the entire dispute for a sum of Rs.1,10,000/- and against which a cheque of Rs.1,10,000/- has already been handed over to the respondent/complainant. The respondent/complainant has accepted this position. The applicant has also agreed to allow disbursement of Rs.75,000/- which has been deposited before the Trial Court during the pendency of the appeal, to the respondent/complainant.

4. The parties have, therefore, prayed that, the offence for which the applicant has been convicted, may be compounded

in view of the settlement between both the parties and the applicant/accused may be acquitted. Considering the fact that the applicant has been convicted for an offence under Section 138 of the Negotiable Instruments Act, which is compoundable in view of Section 147 of the Negotiable Instruments Act, the reliefs sought by the applicant can be allowed. The parties have arrived at an amicable settlement and the payment towards compensation has been already paid to the respondent/complainant and that the applicant has also agreed that the respondent/complainant may be allowed to withdraw the amount of Rs.75,000/- deposited in the Trial Court during the pendency of appeal. In view of the above, I pass the following order.

: ORDER :

(i) In view of the Consent Terms dated 8th February 2018 executed between the parties and in accordance with Section 147 of the Negotiable Instruments Act, the offence under Section 138 of the Negotiable Instruments Act, for which the applicant has been convicted, is allowed to be compounded;

(ii) The impugned judgment and order dated 3rd May 2013 passed by the learned Metropolitan Magistrate, 43rd Court, Borivali, Mumbai in C.C.Nos.2284/SS/2009 and 2285/SS/2009 convicting the applicant for the offence under Section 138 of the Negotiable Instruments Act, as well as the impugned judgment and order dated 18th August 2016 passed by the Sessions Court, Dindoshi in Criminal Appeal No.36 of 2013 dismissing the appeal preferred by the applicant, are quashed and set aside and the applicant is acquitted;

(iii) The respondent/complainant is allowed to withdraw the amount of Rs.75,000/-(Rs.Seventy Five Thousand only) deposited by the applicant in the Court of the learned Metropolitan Magistrate, 43rd Court, Borivali, Mumbai towards the compensation;

(iv) Criminal Revision Application No.628 of 2016 as well as Criminal Application No.633 of 2016 and Criminal Application No.634 of 2016 stand disposed of.

(PRAKASH D. NAIK, J.)