

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.683 OF 2016
IN
CRIMINAL REVISION APPLICATION NO.88 OF 2011

Tahera Khan Ayub Khan
versus
The State of Maharashtra and another

Applicant
Respondents

Mr.K.Padmashri i/by Kulkarni & Associates for applicant.
M.Arunraj Sermasekaran for respondent no.2.
Ms.PH.Gadhvi, APP, for State.

CORAM : PRAKASH D. NAIK, J.
DATE : 21st February 2018

PC :

1. The applicant was convicted for offence under Section 138 of Negotiable Instruments Act vide judgment and order dated 11th November 2008. The applicant was sentenced to suffer simple imprisonment for three months and was also directed to pay a sum of Rs.4,50,000/- to the complainant as compensation. The applicant was prosecuted vide CC No.3000241/SS/2007 before the Court of learned Metropolitan Magistrate, 30th Court, Kurla, Mumbai. Thereafter the applicant filed an appeal before the Sessions Court bearing Criminal Appeal No.655 of 2008. The said appeal was dismissed vide judgment and order dated 15th February 2011. The applicant thereafter preferred Criminal Revision Application No.88 of 2011 before this Court which was dismissed on 23rd June 2011.

2. The applicant has preferred present application on the ground that the parties have settled the dispute and the offence under Section

138 of Negotiable Instruments Act may be compounded. The parties have also executed consent terms which are annexed to the application. In the said consent terms it is stated that both the parties have amicably settled the dispute. It is submitted that the applicant had deposited Rs.60,000/- before the Sessions Court at Bombay on 25th September 2009 vide receipt No.1985567 and Rs.90,000/- on 10th November 2009 in Sessions Court vide receipt no.1985746. The applicant has also deposited Rs.1,00,000/- during pendency of the revision application in this Court on 13th April 2011 vide receipt no.006726. It is agreed between the parties that the respondent-complainant be allowed to withdraw the aforesaid amount in lieu of the settlement between the parties. It is submitted that the complainant has agreed to accept Rs.2,50,000/- as full and final amount.

3. The complainant is present in the Court. The applicant-accused, however, is not present in the Court. It is submitted by the advocate for the applicant that she could not remain present in the Court since her husband is suffering from serious ailment of cancer, however, she has filed an affidavit dated 10th August 2017 which confirms the settlement. In the affidavit it is also stated that the applicant is not in a position to travel since her husband is suffering from cancer and he is bed ridden. The complainant is present in the Court and he has stated that the parties have settled the dispute and he has no objection for setting aside the conviction. It is, however, stated that the complainant be allowed to withdraw the amount deposited by the applicant-accused in the Court as stated hereinabove.

4. Learned counsel for the applicant has relied upon the decision of

Hon'ble Supreme Court in the case of **K.M.Ibrahim Vs. K.P.Mohammed and another** reported in (2010)1-SCC-798 and another decision of Gujarat High Court in case of **Kirpalsingh Pratapsingh Ori Vs. Salvinder Kaur Hardisingh Labana** (2004-Cri.L.J.-3786). In the decision in case of K.M.Ibrahim (supra), the Hon'ble Supreme Court has observed that the application for compounding of offence under section 147 of Negotiable Instruments Act can be made at the appellate stage and even under the proceedings under Article 226 of Constitution of India. It is also observed that in the event application for compounding is allowed in accordance with Section 147 of Negotiable Instruments Act, the conviction be set aside. In the decision in the case of Kirpalsingh Pratapsingh (supra), the parties were allowed to compound the offence after revision application preferred by the accused was disposed of on account of amicable settlement between the parties.

5. Learned advocate for applicant submitted that original receipts of the deposits were lost by the applicant, however, on inquiry in the registry of respective Courts, it is confirmed that the applicant had deposited the amounts as stated above. The learned counsel for applicant also pointed out the communication dated 17th February 2018 issued to the advocate of applicant by registry giving details about deposit of Rs.1,00,000/- made by applicant in this Court vide DD No.006726 dated 13th April 2011.

6. Taking into consideration the fact that the parties have settled the dispute and the accused had agreed to make payment of Rs.2,50,000/- to the complainant, and also taking into consideration the consent terms executed by the parties and the affidavit tendered by

the applicant-accused, in the interest of justice, this application can be allowed. Hence, I pass following order :

ORDER

- (i) Criminal Application No.683 of 2016 is allowed;
- (ii) In accordance with Section 147 of Negotiable Instruments Act and in the light of consent terms executed between the parties, the parties are allowed to compound the offence under Section 138 of Negotiable Instruments Act and the judgment and order dated 11th November 2008 passed by Metropolitan Magistrate, 30th Court, at Kurla, Mumbai in CC No.3000241/SS/2007 as well as judgment and order dated 15th February 2011 passed by Sessions Court in Criminal Appeal No.655 of 2008 are set aside;
- (iii) The applicant is acquitted for the offence under Section 138 of Negotiable Instruments Act which was subject matter of the proceedings in CC No.3000241/SS/2007;
- (iv) The respondent no.2-complainant is allowed to withdraw a sum of Rs.60,000/- deposited by applicant on 25th September 2009 in Sessions Court vide receipt No.1985567 in Appeal No.655 of 2008 as well as Rs.90,000/- deposited on 10th November 2009 with Sessions Court in Appeal No.655 of 2008 vide receipt No.1885746. The respondent no.2-complainant is also allowed to withdraw Rs.1,00,000/- deposited by the applicant in this Court in Criminal Revision Application No.88 of 2011 on 13th April 2011 vide receipt No.006726;
- (v) Criminal Application No.683 of 2016 is disposed of.

(PRAKASH D. NAIK, J.)

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