

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**NAGPUR BENCH, NAGPUR.****CRIMINAL APPEAL NO. 314 OF 2008**

(Mahatma Jyotiba Fule Nagari Sahakari Patsanstha Vs. Niranjana Vinayakrao
Khadakkar & Another)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri. P.S. Khubalkar, Advocate as a Amicus Curiae.
Shri R.D. Dharmadhikari, Advocate for the
respondent no.1.
Shri V.P. Maldhure, APP for the respondent no.2.

CORAM : S.M. MODAK, J.

DATE : 05th NOVEMBER, 2019.

Respondent-accused was convicted by the trial Magistrate for the offence punishable under Section 138 of Negotiable Instruments Act on 17th April, 2006. When he went in an appeal, he was acquitted by the Appellate Court. The said judgment is challenged by the complainant by way of this appeal.

2. During the pendency of this appeal, the accused has paid Rs.55,000/- to the complainant-appellant on 16th June, 2019 and he obtained no due certificate from the complainant-appellant. It is informed to this Court vide pursis bearing stamp no.

4723 of 2019. The copy of no due certificate is annexed. So also the complainant vide pursis bearing stamp no. 4748 of 2019 has expressed desire to withdraw the appeal by mentioning the payment and issuance of no due certificate.

3. On this background, the issue had arisen whether the guidelines laid down by the Hon'ble Supreme Court in the case of **Damodar S. Prabhu Vs. Sayed Babalal H. in Criminal appeal no. 933 of 2010** will be applicable. This Court has made it clear in the order dated 10th October, 2019. Learned advocate Shri Khubalkar was appointed as *Amicus Curiae*. Thereafter, I have heard him as well as learned advocate for the respondent/accused. No one was present on behalf of the complainant appellant.

4. There was an argument that the guidelines in the case of *Damodar S. Prabhu* (supra) will be applicable only when there is an appeal against conviction. Whereas learned *Amicus Curiae* has taken me to the various observations in the said judgment and submitted that it is nowhere reflected in the judgment that the guidelines will be restricted only in case of an appeal against conviction. He also emphasized that Hon'ble Supreme Court has considered the possibility of compounding as per Section 147 of Negotiable Instruments Act. He has

taken pains in finding out any subsequent view taken by the Hon'ble Apex Court in this behalf. He has pointed out to me in the judgment in case of *Madhya Pradesh State Legal Services Authority Vs. Prateek Jain and another (2014) 10 SCC 690*. The issue was whether the guidelines in *Damodar* (supra) case will be applicable, if there is a compounding in the Lok Adalat. The Hon'ble Apex Court refused to restrict the scope of guidelines to compound before the regular Court only. The said guidelines were held applicable even if there is a compounding before the Lok Adalat.

5. If we read the guidelines, it is true that the thrust for paying the cost is on the accused. But it is material to note that here both the parties are not coming with request of compounding. On different dates they have informed the Court about the payment and about withdrawal.

6. So ultimately, the prayer for withdrawal will have to be considered independently. On this occasion I am not dealing with the issue whether the mode of filing pursis was taken in order to come out of the clutches of the guidelines in the case of *Damodar* (supra). At an appropriate stage, if such issue will arise, this Court will decide the same. Section 257 of Code of Criminal Procedure permits the complainant to withdraw the case with the leave

of the Court. So the person who is coming into Court if he decides not to prosecute the case, he has to obtain the leave of the Court. Whether to grant a leave or not and if the leave has to be granted whether it can be subject to the conditions, its the discretion of the Court. In fact imposing of costs on the complainant can be also one of the condition for granting leave for withdrawal.

7. It is true that trial Magistrate directed the accused to pay Rs.2,17,000/- as a compensation to the complainant apart from the substantive sentence. The said judgment has been set aside. The amount of cheque was Rs.1,08,500/-. Ultimately, the complainant accepted Rs.55,000/-. The accused took a defence about issuing a blank cheque and putting up the amount in it by the complainant. Though after the acquittal by District Court, the complainant has settled by accepting Rs.55,000/-. So it seems that belatedly the complainant has accepted the grievances of the accused to a certain extent. I think such tendency of settling at a belated stage also needs to be curtailed by the Court and imposing a costs is one of the way to achieve the said object. I am not inclined to impose exemplary costs. I think the complainant needs to pay costs of Rs.2000/-. Hence, the order.

ORDER

- i. The appeal is disposed of as withdrawn.
- ii. Complainant-appellant to deposit the cost of Rs.2000/- to High Court Legal Services Sub Committee, Nagpur within one month from today. If it is not paid it will be recovered as a land revenue.
- iii. I expressed my gratitude towards the assistance tendered by Shri P.S. Khubalkar, Advocate as Amicus Curiea.

JUDGE