

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

**CRIMINAL REVISION APPLICATION NO.20 OF 2021  
WITH  
APPLN/345/2021 IN REVN/20/2021**

AMOL S/O KAILAS SHINDE  
VERSUS  
RIYA FLOWER THROUGH ITS PROPRIETOR

...  
Advocate for Applicant : Mr. S. R. Bodade  
Advocate for Respondent : Mr. S. A. Ambad.

...  
**WITH  
APPLN/756/2021 IN REVN/20/2021**

MEENA W/O KAILAS SHINDE  
VERSUS  
RIYA FLOWER THROUGH ITS PROPRIETOR

...  
Advocate for Applicant : Mr. S. R. Bodade  
Advocate for Respondent : Mr. S. A. Ambad

...  
**CORAM : SMT.VIBHA KANKANWADI, J.  
DATE : 17-03-2021.**

**ORDER :**

1. Learned advocate for petitioner/original accused is present. Respondent along with his advocate is also present. Heard both sides.
2. The original complainant has filed affidavit in which she has stated that, she has received the cheque amount and she is ready to compound the offence. The complainant had filed complaint i.e. Summary Criminal Case No.5517 of 2012 against the present petitioner/original accused contending that the petitioner has

committed offence punishable under Section 138 of the Negotiable Instruments Act. After trial, the learned Judicial Magistrate, First Class, 12<sup>th</sup> Court, Aurangabad has convicted the present petitioner on 26-02-2015. The petitioner/ original accused was directed to suffer rigorous imprisonment for six months and to pay compensation of Rs.3,50,000/-.

3. The present petitioner/ original accused had filed Criminal Appeal No.59 of 2015 before Additional Sessions Judge, Aurangabad. The learned Additional Sessions Judge, after hearing both sides, has dismissed the appeal on 29-01-2021, hence the present revision petition is filed.

4. The learned advocate for the petitioner/ original accused submits that, the petitioner/ original accused at present is in jail.

5. The cheque amount of the disputed cheque was Rs.2,00,000/- and the learned Magistrate had directed to pay compensation of amount @ Rs.3,50,000/- under Section 357 (3) of the Code of Criminal Procedure. Now the respondent/original complainant has stated in her affidavit that, she has received Rs.3,50,000/- from the petitioner. When the interest of the complainant has been mitigated and, she, wants to compound the offence under Section 320 of the Code of Criminal procedure, it can be so allowed under Sub-section (6) of Section 320 of the Code of Criminal procedure.

6. It will not be out of place to mention here that, the offence punishable under Section 138 of the Negotiable Instruments Act is compoundable. Further, in view of the decision in, *Damodhar Damodar*

*S.Prabhu v. Sayed Babalal H.*, reported in 2010 (5) SCC 663, wherein the guidelines have been issued in paragraph No.21 of the Judgment. It has been proposed and directed that,

*“(b) If the accused does not make an application for compounding as aforesaid, then if an application for compounding is made before the Magistrate at a subsequent stage, compounding can be allowed subject to the condition that the accused will be required to pay 10% of the cheque amount to be deposited as a condition for compounding with the Legal Services Authority, or such authority as the Court deems fit.”*

And in

*“(c) Similarly, if the application for compounding is made before the Sessions Court or a High Court in revision or appeal, such compounding may be allowed on the condition that the accused pays 15% of the cheque amount by way of costs.”*

7. Taking into consideration these guidelines while allowing the complainant to compound the offence, on last date the accused was orally directed to be directed to pay amount of Rs.30,000/- to the High Court Legal Services Sub-Committee, Aurangabad and he has paid it on 16-03-2021. With these directions the complainant is allowed to compound the offence. Hence, following order.

### **ORDER**

(1) The conviction awarded by Judicial Magistrate, First Class, Court No.12, Aurangabad, in Summary Criminal Case No.5517 of 2012 dated 26-02-2015, and the confirmation of the same by learned Additional Sessions Judge, Aurangabad in Criminal Appeal No.59 of 2015

dated 29-01-2021, is hereby set aside.

(2) The accused / petitioner Amol s/o Kailas Shinde stands acquitted of the offence punishable under Section 138 of the Negotiable Instruments Act. He be set at liberty forthwith.

(3) Registrar (Judicial) to issue directions to Superintendent, Harsul Jail, Aurangabad.

(4) Accordingly Criminal Revision Application No.20 of 2021 and Criminal Application No.345 of 2021, and Criminal Application No.756 of 2021 stand disposed of accordingly.

(5) The amount deposited by the original accused before the learned Trial Court and / or Appellate Court, is allowed to be withdrawn as per their terms of settlement.

**(SMT. VIBHA KANKANWADI)**  
**JUDGE**

*vjg/-*