

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO.125 OF 2022
WITH
CRIMINAL APPLICATION NO.1299 OF 2022

M/S. LAXMI BATTERY

VERSUS

SHAIKH IBRAHIM S/O SHAIKH MAHETAB

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Mr. P.N. Kalani, Advocate for the applicant

Mr. S.M. Gunjal, Advocate for the respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 19th APRIL, 2022

PER COURT :

1 Present application has been filed for compounding of offence. The respondent-original complainant had filed Summary Criminal Case No.1609/2016 before the learned Judicial Magistrate First Class, Parbhani, (Court No.1) contending that the present applicant-original accused has committed offence punishable under Section 138 of the Negotiable Instruments Act. After a full fledged trial the learned Judicial Magistrate First Class has convicted the accused on 19.10.2018 and sentenced to suffer simple imprisonment for six months and pay fine double of the cheque

amount/-, in default of payment of fine to suffer simple imprisonment for one month. The cheque was of Rs.1,00,000/-.

2 The said decision was challenged by the original accused in Criminal Appeal No.71/2018 before Court of Additional Sessions Judge at Parbhani. The appeal was heard by learned Additional Sessions Judge and it was dismissed on 30.03.2022. On the same day it appears that the appellant was taken in custody and since then he is in jail.

3 Now, during the pendency of the Criminal Revision Application No.125/2022 it appears that the compromise has taken place and in view of the said compromise the original complainant, who is present before this Court makes a statement, that he has received amount of Rs.1,55,000/- from the accused and want to compound the offence.

4 Section 138 of the Negotiable Instruments Act is compoundable and further in view of the decision of the Three Judge Bench of the Apex Court in **Damodar S. Prabhu vs. Sayed Babalal H., 2011 (1) Mh.L.J., 357**, when the compounding of the offence is before the High Court in revision, then the compounding can be allowed on condition that the accused pays 15% of the cheque amount by way of costs. Under such circumstance, the learned Advocate for the accused-applicant submits that the accused is ready

to deposit the said amount, which would be 15% of the cheque amount with the High Court Legal Services Sub-Committee, Aurangabad and DD to that effect has been produced by the applicant. Hence, the compounding is allowed and following order is passed.

ORDER

1 Application stands allowed.

2 The conviction awarded to the accused Shaikh Habib s/o Shaikh Allabaksh by learned Judicial Magistrate First Class, Parbhani (Court No.1) in Summary Criminal Case No.1609/2016 on 19.10.2018 and Judgment and order passed by the learned Additional Sessions Judge, Parbhani in Criminal Appeal No.71/2018 dated 30.03.2022, are hereby quashed and set aside.

3 Original complainant Shaikh Ibrahim s/o Shaikh Mahetab is allowed to compound the offence in view of Section 326 of the Code of Criminal Procedure, that is, in view of the compromise and also in view of deposit of Demand Draft of 15% of the cheque amount by the accused-applicant in favour of the High Court Legal Services Sub-Committee, Aurangabad, today.

4 In view of the fact that the Judgment of both the Courts below have been set aside, the Criminal Revision Application No.125/2022 and

Criminal Application Nos.1299/2022 stand disposed of.

5 Applicant-accused be released forthwith.

6 Original complainant is allowed to withdraw the total amount of Rs.25,000/- i.e. Rs.5,000/- deposited by the applicant on 19.10.2018 before learned J.M.F.C., Rs.5,000/- deposited by the applicant on 24.10.2018 before learned Additional Sessions Judge and Rs.15,000/- deposited by the applicant on 26.11.2018 before learned Additional Sessions Judge.

7 Registrar (Judicial) to forward the Demand Draft to High Court Legal Services Sub-Committee, Aurangabad with immediate effect.

8 Parties to act on authenticated copy of this order.

(Smt. Vibha Kankanwadi, J.)

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