

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO.98 OF 2022

M/s Ambika Electrovision ..Applicant
Versus
M/s Rahul Furniture & Anr ..Respondents

Mr. Ajinkya Badar, for Applicant.

Ms. Renuka Birajdar, i/b Chetan D. Oswal, for Respondent No.1.

Mr. Arfan Sait, APP, for State/Respondent.

Mr. Anand Kumar Ghisulal Jain, present-in-person.

CORAM : SARANG V. KOTWAL, J.

DATE : 31st JULY 2023

PC :

1. The Revision Applicant was the original Accused in S.T.C. No.206 of 2013 before the Judicial Magistrate First Class, Vadgaon Maval, district Pune. The learned trial Judge convicted the Applicant for commission of offence punishable under Section 138 of the Negotiable Instruments Act 1881 (for short "N.I. Act"). He was directed to pay cheque amount and compensation of Rs.18 lakhs to the Complainant as per Section 357 (3) of Criminal Procedure Code and in default he was directed to suffer simple imprisonment for one month. The Applicant challenged the said

order before the Court of Sessions at Pune, vide Criminal Appeal No.367 of 2018. That Appeal was dismissed by the Additional Sessions Judge, Pune vide his order dated 8th February 2022.

2. Heard learned Counsel for the Applicant as well as Respondent No.1 (the original Complainant). Both the learned Counsel submitted that the matter is finally settled between the parties and both of them consented for compounding of the offence. The Petitioner as well as the Respondent No.1 have filed their separate affidavits, they are taken on record.

3. The Applicant- Kunal Mali and the Respondent No.1- Anand Kumar Jain are present in the Court. They are identified by their respective Counsel.

4. The Petitioner has stated in his affidavit that they have settled the matter between themselves. He has complied with the consent terms dated 14th February 2022, which are annexed with MOU to this Application.

5. The Respondent No.1 in his affidavit has stated that the Applicant had executed consent terms with the Respondent No.1

and that the Applicant has complied with the stipulated consent terms. He has referred to certain amount which he has received till 13th July 2023. In paragraph 5 he has stated that the Applicant has complied with all the stipulated consent terms and as agreed, the Respondent No.1 was giving his full consent to allow this Revision Application and both the judgments at the trial Court as well as Appellate Court be quashed and set aside. Thus, there is settlement between the parties and a joint prayer is made for compounding the offence. Learned Counsel for the Applicant referred to the guidelines issued by the Hon'ble Supreme Court in Criminal Appeal No.963 of 2010 in the case of **Damodar S. Prabhu v. Sayed Babalal H.** decided on 3rd May 2010. In those guidelines, the Hon'ble Supreme Court has laid down that 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.

6. Learned Counsel for the Applicant invited my attention to further observations of the Hon'ble Supreme Court in the same

judgment, wherein, it was mentioned that though the imposition of cost by the competent Court is a matter of discretion, the scale of cost has been suggested in the interest of uniformity. It was importantly observed that the competent Court can reduce the cost with regard to the specific facts and circumstances of the case while recording reasons in writing for such variance. In the present case, learned Court for the Applicant submitted that to settle the issue, the Petitioner has sold his house and shop. He has suffered major financial loss in his business during Covid-19 period. Learned Counsel for the Respondent No.1 agrees with these submissions.

7. Considering these facts and the current financial position of the Petitioner, the condition to deposit cost need not be imposed in the facts and circumstances of this case.

8. Hence, the following order:

ORDER

i) The offence is allowed to be compounded.

ii) The judgment and order dated 23rd April 2018 passed by the Judicial Magistrate First Class, Vadgaon Maval, district Pune in S.T.C. No.206 of 2013 as well as the judgment and order dated 8th February 2022 passed by the Additional Sessions Judge, Pune in Criminal Appeal No.367 of 2018, are set aside.

iii) Consequently the Applicant is acquitted from the charges of commission of offence punishable under Section 138 of the N.I. Act which is the subject matter of these proceedings.

(SARANG V. KOTWAL, J.)