

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.160 OF 2017
WITH
CRIMINAL APPLICATION NO.165 OF 2017
IN
CRIMINAL REVISION APPLICATION NO.160 OF 2017**

Mangesh Kondiba Jadhav ...Applicant
Versus
Avanti Sunil Dixit & Anr ...Respondents

None present for Applicant.

Ms. Nishi Singhvi, i/b Vikram R. Sutaria, Advocate for Respondent No.1.

Mr. Arfan Sait, APP for State/Respondent No.2.

**CORAM : SARANG V. KOTWAL, J.
DATE : 3rd NOVEMBER 2023**

PC :

1. The matter is placed by the office for speaking to the minutes to correct the typographical error in the title of the order dated 31st October 2023. In that title Criminal Bail Application No.165/2017 is mentioned. Instead of that, it should be Criminal Application No.165/2017. This typographical error be corrected and in the title of the order Criminal Application No.165/2017 be mentioned.

2. Learned Counsel appearing for the Respondent No.1 points out that, in paragraph No.1, the date of the trial Court's order is mentioned as 26/03/2023 at two places. The correct date is 26/03/2013. The date mentioned in paragraph No.1 at two places be corrected and the correct date 26/03/2013 be mentioned.

3. The order be corrected accordingly and the corrected order be uploaded. The rest of the order shall remain as it is.

(SARANG V. KOTWAL, J.)

CORRECTED ORDER DATED 31.10.2023 READS THUS :

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**CRIMINAL REVISION APPLICATION NO.160 OF 2017
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Mangesh Kondiba Jadhav Applicant

versus

Avanti Sunil Dixit & Anr. Respondents

.....

- Mr. Sneha Jethwa, Advocate for Applicant.
- Mr. Agastya Desai i/b. Vikram R. Sutaria, Advocate for Respondent No.1.
- Mr. Ajay Patil, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 31st OCTOBER, 2023

P.C. :

1. The Applicant was the original accused in SCC No.3746/2009 before the Judicial Magistrate First Class, Thane. At the conclusion of the trial, the Applicant was convicted for commission of offence punishable u/s 138 of the Negotiable Instruments Act. He was sentenced to suffer simple imprisonment for three months. He was directed to pay an amount of Rs.5 lakhs to the complainant within a period of two months from the date of order i.e. from 26/03/2013. The Trial Court's judgment and order dated 26/03/2013 was challenged by the Applicant before the Additional Sessions Judge, Thane, in Criminal Appeal No.164 of 2013. The said Appeal was dismissed vide judgment and order dated 07/01/2017. The record of this application shows that page Nos.140 to 153 are missing.

Learned counsel for the Applicant has tendered a copy of the judgment of the Additional Sessions Judge, Thane. Learned counsel for Respondent No.1 accepts that it is a correct copy and therefore it is taken on record to complete the record of this application.

2. The prosecution was for dishonour of the cheque for the amount of Rs.4 lakhs. The prosecution case is that the complainant/Respondent No.1 herein was carrying the business of interior decoration. The complainant had carried out the interior work, but the Applicant had not paid the entire amount. In part payment of his dues, he issued a cheque of Rs.4 lakhs drawn on Bharat Sahakari Bank Ltd., Shivaji Nagar Branch, Thane dated 18/02/2009. It was dishonoured and it was the subject matter of the prosecution.

3. At this stage, both the parties have entered into consent terms. They are taken on record and marked 'X' for identification. The complainant i.e. the Respondent No.1 as well

as the Applicant are present in the Court. They are represented by their respective counsel and are identified by their counsel. The consent terms mentions that during pendency of the present application, both the parties have arrived at the mutual satisfactory solution. The Applicant has already deposited Rs.5 lakhs before the Trial Court. Above that, he has paid Rs.5 lakhs more and therefore the parties have arrived at a settlement. Paragraph No.10 of the consent terms mentions that the Respondent No.1 irrevocably agrees and concurs to withdraw the present proceedings. Paragraph No.12 mentions that the Respondent No.1 shall withdraw all the allegations against the Applicant. Paragraph No.14 mentions that the Respondent No.1 has taken a decision to withdraw the proceeding at her free will and accord.

4. Learned counsel for the parties submitted that in view of the consent terms, the parties be allowed to compound the offence. They also jointly submit that the Trial Court be directed to permit the Respondent No.1 to withdraw the amount of Rs.5

lakhs which the Applicant has deposited before the Trial Court, pursuant to the order passed by this Court in the present proceeding vide order dated 04/04/2017 passed in Criminal Application No.165 of 2017 in Criminal Revision Application No.160 of 2017.

5. Considering that the parties did not wish to escalate the matter further and are desirous to compound the offence, there is no reason as to why permission cannot be granted to them. Learned counsel for the Applicant submitted that some leniency be shown to the Applicant in directing to deposit the cost to the Legal Services Authority of this Court. She submitted that the Applicant is unmarried, but he is looking after his old parents and an unmarried sister. The Applicant had to make arrangement to make payment to the Respondent No.1 and he is not in a financially sound condition.
6. Considering these submissions, some leniency can be shown to the Applicant in depositing the cost to the Legal Services

Authority of this Court. Based on this discussion, following order is passed :

7. Hence, the following order :

ORDER

- (i) The offence is permitted to be compounded.
- (ii) The Applicant is acquitted in connection with SCC No.3746/2009 before the Judicial Magistrate First Class, Thane.
- (iii) The Respondent No.1 is permitted to withdraw the amount of Rs.5 lakhs with its accrued interest, which the Applicant had deposited before the Trial Court, pursuant to the order dated 04/04/2017 passed in Criminal Application No.165 of 2017 in Criminal Revision Application No.160 of 2017.
- (iv) The Applicant shall deposit an amount of Rs.30,000/- within a period of six weeks before the Legal Services Authority of this Court.

- (v) The order of compounding of the offence and acquittal will be subject to deposit of this amount of Rs.30,000/- before the Legal Services Authority.
- (vi) With these directions, the Revision Application and the Bail Application stand disposed of.

(SARANG V. KOTWAL, J.)