

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Revision Application No.166 of 2022
With
Interim Application No.1270 of 2022
And
Interim Application No.1271 of 2022
In
Criminal Revision Application No.166 of 2022

Mr. Shailesh Balshekhar Mishra
Aged 44 years, Occ:Service
Sunder Tower CHS Ltd.,Ground Floor,
Flat No.001, T.J.Road, Sewree (W)
Mumbai-400015

... Applicant.

Versus

1. Mr. Vijay Ganpat Ghadi
Aged 50 yrs Prabhanjan Building,
Room No.7 Dr.S.S.Rao Road,
Parel, Mumbai-400012

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2. The State of Maharashtra

... Respondents.

Ms Avantika Nishad, Advocate i/b Mr Jagdish S. Singh for Applicant.
Ms Swati Khot, Advocate for Respondent No.1.
Mr AR Kapadnis, APP for State.

Coram : R.N.Laddha, J.

Date : 16 October 2023.

P.C.:

Heard Ms Avantika Nishad, the learned Counsel for the applicant/original accused, Ms Swati Khot for the first respondent, and Mr AR Kapadnis, learned Additional Public Prosecutor for respondent-

State.

2. This revision application is filed against the judgment and order passed by the Additional Sessions Judge, Mumbai, in Criminal Appeal No.804 of 2017 and the judgment and order of the learned Metropolitan Magistrate, 7th Court, Dadar, Mumbai, in CC No.1173/SS/2014 whereby, the applicant/accused was convicted under Section 138 of the Negotiable Instruments Act, 1881.

3. The learned Counsel for the contesting parties jointly submitted that during the pendency of the present revision application, the applicant and the first respondent have resolved their dispute amicably and executed consent terms dated 16/10/2023 and have placed on record a copy thereof. The learned Counsel for the respondent no.1 submitted that the respondent No.1 has no objection to setting aside the order and judgment of conviction, affirmed by the learned Additional Sessions Judge in the appeal. Respondent No.1 is present in person and is identified by his Counsel. When questioned, he confirmed that he has no objection to set aside the conviction of the applicant. The applicant/accused is also present before the Court and extended his consent to release the deposited amount of Rs.2,40,000/- in favour of the complainant/first respondent. He is identified by his Counsel.

4. The learned APP for respondent No.2 submits that appropriate orders may be passed.

5. The offence under Section 138 of the NI Act is limited to two private parties involved in a commercial transaction. However, the intent of the legislature in providing a criminal prosecution for dishonour of cheque is to ensure the credibility of transactions involving negotiable instruments. It is a settled position in law that Section 138 of the Act primarily aims to ensure compensation to the complainant. The NI Act also allows parties to enter into a compromise, both during the pendency of the complaint and even after the conviction of the accused. Since the parties have amicably settled their dispute, this Court sees no difficulty in setting aside the conviction of the applicant.

6. In view of this, the judgment and order dated 23.11.2017 passed by the learned Metropolitan Magistrate, 7th Court, Dadar, Mumbai in CC No.1173/SS/2014 and the judgment and order dated 22.2.2022 passed by the Additional Sessions Judge, Mumbai, in Criminal Appeal No.804 of 2017 confirming the conviction of the applicant are set aside and the applicant/accused is acquitted. As agreed between the parties, the amount of Rs.2,40,000/- deposited by the applicant/accused with the trial Court is permitted to be released in favour of the first respondent/complainant.

7. Accordingly, the present revision application stands disposed of. In view of the disposal of the revision application, the pending interim applications also stand disposed of.

[R.N.Laddha, J]