

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

CRIMINAL REVISION APPLICATION NO. 341 OF 2018

Mehrunnish Huseni

..Applicant.

Versus

Farook Abbas Shaikh & Anr.

..Respondents

Mr. R. S. Datar i/b. Rahul D. Oak for Applicant.

Mr. Ashraf Kapoor i/b. Akram Kapoor for Respondent No.1.

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

CORAM : SARANG V. KOTWAL, J.

DATE : 4 AUGUST 2023

PC :

1. The revision applicant was convicted by the Metropolitan Magistrate, 7th Court, Dadar, Mumbai, vide his Judgment and order dated 23/06/2016 passed in C.C.No.2751/SS/2013 for commission of the offence punishable U/s.138 of the Negotiable Instruments Act. She was sentenced to suffer imprisonment till rising of the Court. She was sentenced to pay a fine of Rs.63,80,000/- within two months from the date of that order and in default of payment of fine to undergo S.I. for

four months. Out of the fine amount, the amount of Rs.63,70,000/- was directed to be paid as compensation to the complainant who is the Respondent No.1 in the present revision application.

2. This order was challenged by the applicant before the Court of Sessions vide Criminal Appeal No.732 of 2016. Learned Additional Sessions Judge, vide order dated 04/06/2018 dismissed that appeal. Challenging both these orders, the present revision application is filed.

3. Now both the parties have filed separate affidavits recording that the matter is settled between the parties. Learned counsel for both the parties are praying for permission to compound the offence. The affidavits are taken on record.

4. The affidavit of the applicant mentions that the amount of cheque was Rs.50 lakhs. Initially, Rs.36 lakhs were deposited by the applicant and the balance amount of Rs.14 lakhs was offered by the applicant to be paid to the Respondent No.1. The offer was accepted by the Respondent No.1 and even the balance amount of

Rs.14 lakhs are now repaid to the Respondent No.1.

5. The Affidavit of the original complainant/Respondent No.1 mentions specifically that he has no objection if the conviction is set aside.

6. Considering both these affidavits and the submissions made by both learned counsel, the offence can be compounded. Leave can be granted for compounding of the offence.

7. Learned counsel for the applicant referred to Judgment of the Hon'ble Supreme Court in the case of ***Damodar S. Prabhu Versus Sayed Babalal H.***¹. In the said Judgment, the Hon'ble Supreme Court has issued some guidelines. It was mentioned 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. Learned counsel submitted that, in paragraph-25 the Hon'ble Supreme Court has further observed that the competent court can of course reduce the costs with regard to the specific facts and circumstances of a case, while

1 (2010) 5 Supreme Court Cases 663

recording the reasons in writing for such variance.

8. Learned counsel for the applicant submitted that the applicant is 75 year old lady. Her husband has passed away. Her business dealing in steel has suffered because of spread of Covid-19 pandemic. Her son is suffering very serious heart ailment and heavy amount is required for his medical expenses.

9. Considering these submissions, I am inclined to impose lesser costs on the applicant instead of directing payment of 15% of the cheque amount.

10. Hence, the following order:

ORDER

i) Leave to compound the offence is granted.

ii) The Judgment and order dated 23/06/2016 passed in C.C.No.2751/SS/2013 by the Metropolitan Magistrate, 7th Court, Dadar, Mumbai and the order dated 04/06/2018 passed in Criminal Appeal No.732 of 2016 by the Additional Sessions Judge, Greater Bombay, are set aside.

- iii) The Applicant is acquitted.
- iv) The Applicant shall pay Rs.1,00,000/- to the Legal Services Authority of this court within six months from today.
- v) With these observations, the Application is disposed of.

(SARANG V. KOTWAL, J.)