

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

CRIMINAL REVISION APPLICATION NO. 316 OF 2023

M/s. Prem Industries & Ors.

..Applicants.

Versus

M/s. Champion Dealers Mumbai Pvt. Ltd. & Anr.

..Respondents

**WITH
INTERIM APPLICATION NO. 3648 OF 2023
IN
CRIMINAL REVISION APPLICATION NO. 316 OF 2023**

Mr. Pankaj J. Das for Applicants.

Mr. J. S. Kini a/w. Aum Kini i/b. Sapna Krishnappa for Respondent No.1.

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

CORAM : SARANG V. KOTWAL, J.

DATE : 18 OCTOBER 2023

PC :

1. The applicants were the original accused in C.C.No.0601478/SS/2018 before the Metropolitan Magistrate, 6th Court, Mazgaon (Sewree), Mumbai. The prosecution was filed by the Respondent No.1 herein for dishonour of two cheques dated 26.02.2018 and 11.03.2018 for Rs.7 lakhs and Rs.3,72,272/- respectively, drawn on Apna Sahakari Bank Ltd., Ghodbunder branch, Thane (W). The transaction was about supplying round

bars to the applicants' partnership firm and by way of part payment these cheques were issued. The total outstanding amount was Rs.27,89,381/-. At the conclusion of the trial, the applicants were convicted for commission of offence punishable under section 138 r/w. 141 of the Negotiable Instruments Act (hereinafter referred to as 'N.I.Act'). They were sentenced to suffer R.I. for five months each and to pay compensation of Rs.13,00,000/- to the complainant and in default of payment of compensation, to suffer S.I. for five months each.

2. The Applicants challenged that order by way of Criminal Appeal No.91 of 2020 before the Additional Sessions Judge, Mumbai. The said Appeal was dismissed vide order dated 21.01.2023. The Applicants, therefore, have challenged both these orders before this Court.

3. Heard Mr. Pankaj Das, learned counsel for the Applicants, Mr. J. S. Kini, learned counsel for the Respondent No.1 and Mr. Arfan Sait, learned APP for the State/Respondent No.2.

4. In this matter, the parties have arrived at a settlement

and the consent terms are executed between the parties. A copy of the consent terms is tendered in the Court. It is taken on record and marked 'X' for identification. Paragraph-2(a) of the consent terms records that, two Demand drafts of Rs.10 lakhs and Rs.9 lakhs respectively dated 17.10.2023 are ready and they were given to the Respondent No.1-complainant. The matter was settled in full and final settlement for Rs.37,50,000/-. Thus, there is balance of Rs.18,50,000/-. The complainant has accepted that the applicants would pay the said amount on or before 31.03.2024. The schedule is mentioned in paragraph-2(c) of the consent terms. In paragraph-5, it is specifically mentioned that, in view of the above, the order of the learned Magistrate dated 03.01.2020 be set aside. The criminal case numbers are mentioned in paragraph-2.

5. Thus, it is quite clear that, both the parties are seeking compounding of the offence. In this view of the matter, there is no reason to deny their request. On the question of depositing cost to the Legal Services Authority of this Court, the learned counsel for the applicants submitted that the Applicant No.2 is in custody after dismissal of his appeal. The Applicant No.3 is a housewife and she

took a lot of efforts to arrange for the amount mentioned in the consent terms. She had to seek help of her relatives and friends and with a great difficulty she could manage to arrange the amount mentioned in the consent terms. Learned counsel for the applicants further submitted that the applicant No.2 was having a business of Automotive precision components, but that business is not existing any more. He suffered heavy loss during the spread of Covid-19 pandemic. He could not recover financially from that effect and his business is not existing as of today. The Applicants have two children. One is 17 years of age and other is 13 years of age. The younger one is still studying in school and the elder son is in college. Considering all these difficulties, it would be very difficult for the applicants to arrange for the amount of 15% of the cheque amount. He submitted that, some leniency be shown in imposing cost in this matter.

6. Considering these submissions, in my opinion, Rs.20000/- by way of cost would serve the purpose. On these considerations, permission can be granted to compound the offence.

7. Hence, the following order:

O R D E R

- i) The permission is granted to the applicants and the Respondent No.1 to compound the offence. Consequently, the offence is compounded.
- ii) The Applicants are acquitted.
- iii) This order is subject to the deposit of Rs.20000/- by the applicants before the Legal Services Authority of this Court.
- iv) After such amount is deposited, the Applicant No.2 shall be released from the jail forthwith, if not required in any other matter.
- v) With this direction, the Revision Application is disposed of.
- vi) The pending interim application is also disposed of.

(SARANG V. KOTWAL, J.)