

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

CRIMINAL REVISION APPLICATION NO. 364 OF 2023

New Generic Drug House Ltd. & Anr.

..Applicants.

Versus

State of Maharashtra & Anr.

..Respondents

**WITH
INTERIM APPLICATION NO. 4016 OF 2023
WITH
INTERIM APPLICATION NO. 4015 OF 2023
IN
CRIMINAL REVISION APPLICATION NO. 364 OF 2023**

Mr. Sahil Mahajan for Applicants.

Mr. Yogesh Y. Dabke, APP for State/Respondent No.1.

Mr. Benny Joseph a/w. Ananya Bansode a/w. Pallavi Kamath i/b.
BJ Law Offices LLP for Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 1 NOVEMBER 2023

PC :

1. The Applicants were the original accused Nos. 1 and 2 in Case No.1156/SS/2005 (Old Case No.2474/SS/1999) before the Metropolitan Magistrate, 14th Court, Girgaon, Mumbai. The complaint was filed by the Respondent No.2 herein. It is the case of the complainant that, his company supplied Ethyl Thio Ethanol

to the applicant No.1 company, in the year 1999 under different invoices. The Applicant No.2 was the Managing Director and Signatory of the cheques in question. In discharge of the liability to make payment for this transaction, the applicant No.1 company issued two cheques dated 13.10.1999 and 18.10.1999 for total amount of Rs.17,59,784/-. Those cheques were dishonoured. This is the subject matter of the prosecution.

2. In the meantime, the complainant had preferred Summary Suit No.3356 of 2000 before this Court on the original side claiming compensation in respect of the same transaction. In that suit, the consent terms were executed and the accused agreed to pay sum of Rs.57,35,370/-. From the record, according to the complaint, the accused paid only Rs.42 lakhs and did not comply with the consent terms. The trial before the learned Magistrate proceeded. He observed that the accused deserve to be convicted and sentenced. He considered that the compensation would be twice the amount of the cheques which came to Rs.35,19,568/- . There was another prosecution for dishonour of other cheques. After adjusting the proportionate amount which was already paid

the balanced compensation was fixed at Rs.14,19,568/-. The learned Magistrate convicted the applicants for commission of offence punishable U/s.138 r/w. 141 of the Negotiable Instruments Act. The Applicant No.2 was sentenced to suffer S.I. for six months. The applicants were directed to pay the aforesaid amount of the compensation i.e. Rs.14,19,568/- and in default to suffer S.I. for three months.

3. The Applicants challenged that order before the Additional Sessions Judge, Greater Mumbai, vide Criminal Appeal No.249 of 2021. That Appeal was dismissed on 27.10.2023. Hence, the applicants have preferred the present revision application. In the meantime, the applicant No.2 is taken in custody. As of today, he is in custody.

4. Learned counsel for the Applicants submitted that the applicants have paid more than the amount of cheques in the year 2004 itself. He further submitted that, once the consent terms are entered into, the prosecution was not maintainable. He relied on the Judgment of the Hon'ble Supreme Court in the case of *Gimpex*

*Private Limited Versus Manoj Goel*¹. He further submitted that, apart from the merits of the case, without prejudice to his contentions, the applicant is willing to deposit Rs.3 lakhs more. He further submitted that the applicants will have no objection if the Respondent No.2 withdraws that amount.

5. Learned counsel for the Respondent No.2 opposed these submissions. According to him, the ratio in *Gimpex's case (supra)* was not applicable to the facts of the present case. He further submitted that the prosecution was dragged for many years since 1999.

6. Considering the rival submissions, arguable points are raised and, therefore, the revision application is required to be admitted. At the same time, the grievance of the complainant is also justified that the prosecution was pending for many years. In that view, the voluntary offer made by the applicants of deposit of Rs.3 lakhs can be taken into consideration for releasing the applicant No.2 on bail; during the pendency of the revision application.

1 2021 SCC OnLine SC 925

7. Hence, the following order:

O R D E R

- i) The Criminal Revision Application No.364 of 2023 is admitted.
- ii) Call Record and proceedings.
- iii) The Applicants are permitted to deposit Rs.3,00,000/- (Rupees Three Lakhs only) in this Court.
- iv) On deposit of Rs.3 lakhs, the Applicant No.2 shall be released on bail on his executing P. R. bond in the sum of Rs.25000/- during pendency and final hearing of the Revision Application.
- v) The Respondent No.2 is permitted to withdraw the said amount of Rs.3 lakhs, if deposited by the Applicants in this Court.
- vi) The hearing of the revision application is expedited.
- vii) Both the interim applications are disposed of.

(SARANG V. KOTWAL, J.)