

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

CRIMINAL REVISION APPLICATION NO. 365 OF 2023

New Generic Drug House Ltd. & Anr. ..Applicants.
Versus
State of Maharashtra & Anr. ..Respondents

**WITH
INTERIM APPLICATION NO. 4017 OF 2023
WITH
INTERIM APPLICATION NO. 4018 OF 2023
IN
CRIMINAL REVISION APPLICATION NO. 365 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.1349/SS/2005 (Old Case No.2348/M/1999) before the Metropolitan Magistrate, 14th Court, Girgaon, Mumbai. The prosecution case was a result of complaint filed by the Respondent No.2 herein. The complainant company had supplied Ethyl Thio

Ethanol to the applicant No.1 company, in the year 1999. In payment for that supply, the applicant No.1 company issued three cheques totalling Rs.17,61,760/-. The Applicant No.2 was the Managing Director and the Signatory of those cheques. Those cheques were dishonoured and, therefore, the prosecution was launched.

2. In the meantime, the complainant also filed Summary Suit No.3356 of 2000 before this Court on the original side for claiming compensation in respect of the same transaction. In that suit, the consent terms were entered into and the accused No.1 company agreed to pay sum of Rs.57,35,370/-. According to the complaint, the accused paid only Rs.42 lakhs and did not comply with the consent terms. At the conclusion of trial, learned Magistrate took into consideration the earlier payment made. There was another matter for dishonour of different cheques between the same parties, wherein, both these applicants were the accused. Taking into consideration all this background, 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 compensation of Rs.14,23,520/- to the Respondent No.2 and in default to suffer S.I. for three months. This Judgment and order was passed on 22.07.2021. It was challenged before the Additional Sessions Judge, Greater Mumbai, vide Criminal Appeal No.250 of 2021. The said Appeal was dismissed on 27.10.2023. Therefore, the applicants have preferred the present revision application.

3. Learned counsel for the Applicants submitted that they have paid more than the amount of cheques in the year 2004 itself pursuant to the consent terms. He submitted that, once the consent terms are entered into by the parties, the prosecution could not have continued. 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, there was no legal enforceable liability as the supply was not in accordance with the agreed terms.

4. Learned counsel for the Respondent No.2 opposed these

1 2021 SCC OnLine SC 925

submissions. According to him, since the applicants did not comply with the consent terms, they were not binding on the Respondent No.2 and, therefore, the ratio of Judgment in *Gimpex's case (supra)* is not applicable to the facts of the present case.

5. Learned counsel for the applicant, on instructions, stated that, without prejudice to his contentions on merits, the applicants are ready and willing to deposit Rs.3 lakhs more in this Court during pendency of the revision application and that the applicants do not have any objection if the Respondent No.2 is permitted to withdraw that amount.

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.

7. Hence, the following order:

O R D E R

- i) The Criminal Revision Application No.365 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 disposal 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.)