



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL REVISION APPLICATION NO.49/2023
Heena Digesh Khakkar .vs. Imran Opai Abdul Aziz Bhai Opai

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

M. K. Thakkar, Advocate for applicant.
Mr. G. M. Shitut, Advocate for non applicant.

CORAM : ANIL L. PANSARE, J.
DATE : 31.08.2023

The applicant and non applicant have jointly filed application under Section 147 of the Negotiable Instruments Act, 1881. It is taken on record and marked "X" for identification. Office is directed to register the application.

2. The applicant has been convicted by learned 20th Jt. Judicial Magistrate First Class, Nagpur in S.C.C.No.9576/2015, by judgment and order dated 11.09.2018, for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The applicant was sentenced to undergo simple imprisonment for two months and to pay a fine of Rs.5,00,000/-, in default, to undergo rigorous imprisonment for six months. This judgment of conviction came to be confirmed by learned Additional Sessions Judge-12, Nagpur on 08.02.2023 in Criminal Appeal No. 268/2018. Against this, the present revision application is filed.

3. Learned counsels for the parties submit that the matter has been settled by mediation. The terms of compromise are placed on record. The applicant has filed an application under Section 147 of the Negotiable Instruments Act, 1881 for compounding the offence in terms of compromise entered into by and between the parties. The learned counsel for the non applicant is in agreement with the submissions made on behalf of the applicant.

4. Perused the application and compromise. It is appreciated that the dispute has been amicably settled between the parties through mediation.

5. Considering the above, since the dispute is settled between the parties amicably, the offence punishable under section 138 of the Negotiable Instruments Act, 1881 ought to be compounded in the light of the judgment passed by the Hon'ble Supreme Court in the case of **Damodar S. Prabh Vs. Sayed Babalal H.** reported in **AIR 2010 SCC 1907**. Hence, the following order.

ORDER

(i) The revision application so also the application under Section 147 of the Negotiable Instruments Act, 1881 are allowed.

(ii) The offence under Section 138 of the Negotiable Instruments Act, 1881 stands compounded subject to the applicant depositing costs of 15% of the

cheque amount, which is 75,000/- within seven working days from today with the High Court Legal Services Sub Committee, Nagpur.

(iii) The judgment and order dated 08.02.2023 passed by Additional Sessions Judge – 12, Nagpur in Criminal Appeal No.268/2018 so also judgment and order dated 11.09.2018 passed by learned 20th Judicial Magistrate First class, Nagpur in S.C.C.No.9576/2015 are quashed and set aside.

(iv) Applicant Heena Digesh Khakkar stands acquitted of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

(v) Parties to act upon the authenticated copy of this order.

6. At this stage, learned counsel for the non applicant seeks permission to withdraw the amount of Rs.1,00,000/- deposited by the applicant before the first appellate court.

7. The prayer being reasonable, is granted. The non applicant is at liberty to file appropriate application in this regard before the first appellate court.

(Anil L. Pansare, J.)