

Digitally signed by
PALLAVI MAHENDRA
WARGAONKAR
Date: 2024.05.08
18:04:00 +0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.392 OF 2024
IN
CRIMINAL REVISION APPLICATION NO.60 OF 2024

Mrs. Smita Nitin Sheth ...Applicant
vs.
Mrs. Shashi Prabhat Jhunjhunwala and Anr. ...Respondents

WITH
INTERIM APPLICATION NO.393 OF 2024
IN
CRIMINAL REVISION APPLICATION NO.61 OF 2024

Mrs. Smita Nitin Sheth ...Applicant
vs.
Prabhat Jhunjhunwala and Anr. ...Respondents

Mr. Vivek Babar a/w Mr. Darshan Ashar, Mr. Ajinkya Kadam i/b. M/s. Sanjay Udeshi & Co.	Advocate for Applicant.
Mr. Chaitanya Pendse:	Advocate for Respondent No.1.
Mr. H.J. Dedhia:	APP for State.

CORAM : S. M. MODAK, J.
DATE : 7th MAY 2024

P.C. :-

1. Taken on board by way of praecipe.
2. Heard learned Advocate for the Applicant- Accused and learned

Advocate for the Respondent – complainant.

3. There were two complaints filed before the Court of Metropolitan Magistrate, 64th Court, Esplanade, Mumbai for the offence punishable under Section 138 of the Negotiable Instruments Act. Accused No.1 is a Partnership Firm and Accused Nos.2 and 3 are described as Partners. By the several judgments, the trial Court convicted Accused No.3 for the said offence and the sentence is till rising of the Court and fine of Rs.6,00,000/- to be paid to the complainant.

4. The Appeals preferred by the Applicant were dismissed on 23rd November 2023. That is why, these two Applications.

5. Applicant states that she has deposited the following amounts:-

- (i) Rs. 1,20,000/- before the Appellate Court in each case.
- (ii) Rs.1,20,000/- as directed by this Court in each case in this Court.

6. Now, the parties have settled the dispute and they have entered into consent terms separately in individual application. They are taken on record and marked as Annexure 'A' in each matter. They are signed by Applicant, Respondent No.1 and their respective counsel. Both the

parties are present. They admit the contents. Mutually they have agreed that Applicant will pay Rs.6,00,000/- in the individual case to the complainant. The break-up is as follows:-

- a. Rs.1,20,000/- and Rs.1,20,000/- in every case deposited as mentioned above. The Respondent No.1 has applied for withdrawal. Applicant consents for the withdrawal.
- b. Rs.3,60,000/- remaining amount is paid by way of two Demand Drafts.

7. Respondent consents for setting aside the conviction. As per the observations of the Supreme Court in case of *Damodar S. Prabhu vs. Sayed Babalal H.*¹, accused has to pay 15% of the cheque amount. It comes to Rs.90,000/- on the basis of Rs.6,00,000/-. There is a prayer for reducing the amount because the Applicant is woman and her husband has expired. Let her deposit Rs.50,000/- in every case in the account of "High Court Legal Aid Fund". In view of above, the following order is passed:-

ORDER

- (i) Consent Terms are recorded.

1. 2010(5) SCC 663

- (ii) The conviction and sentence passed in Criminal Case No.2734/SS/2013 and Criminal Case No.2735/SS/2013 for the offence punishable under Sections 138 of the Negotiable Instruments Act, 1881 passed by the Metropolitan Magistrate, 64th Court, Esplanade Court, Mumbai and confirmed by the Court of Additional Sessions Judge, Mumbai in Criminal Appeal No.1026 of 2019 and Criminal Appeal No.1025 of 2019 on 23rd November 2023 are set aside.
- (iii) Let Applicant to deposit an amount of Rs.50,000/- in the account of “High Court Legal Aid Fund” in every case within a period of four weeks from today.
- (iv) Respondent No.1 is at liberty to withdraw the amount deposited as mentioned in body of the order.
- (v) Revision application and Interim Applications are disposed of in above terms.

[S. M. MODAK, J.]