

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

**REVISION APPLICATION NO. 237 OF 2017
ALONGWITH
CRIMINAL APPLICATION NO. 248 OF 2017
IN
REVISION APPLICATION NO. 237 OF 2017**

Suresh Dindayal Agarwal Prop.
Of Sanjivan Agency
vs.

...Applicant

Sitaram Ganpat Gate and Anr.

...Respondents

Mr. Girish R. Agarwal a/w Mr. Shubham Jangam a/w Ms. Naina
Boraste - Advocate for the Applicant

Mr. Veerdhaval Kakade - Advocate for the Respondent No. 1

Mr. A. D. Kamkhedkar - APP for the Respondent-State

CORAM : S. M. MODAK, J.

DATE : 01st FEBRUARY, 2024

P. C. :-

1. During pendency of this revision application, the Applicant-convicted accused and Respondent No. 1 have settled their dispute.

2. There is concurrent findings of the fact and conviction is for the offence punishable under Section 138 of the Negotiable Instruments Act by the Court of the JMFC Vadgaon, Maval Pune. The sentence is as follows :-

- (i) Rigorous imprisonment for six months and
- (ii) compensation of Rs. 3,82,000/-

(amount of cheque is Rs. 2,50,000/- +interest is of Rs. 1,32,778/-)

3. The Appellate Court has confirmed his conviction whereas reduced the substantive sentence to three months. Now consent terms are filed on record and they are signed by the Applicant and the Respondent – Complainant. Both are present. They admit the terms. They are identified by respective advocates. The entire amount of the compensation is deposited by the Applicant before the Appellate Court and before this Court as described in para no. 2(a) of the consent terms. This amount is to be paid to the Complainant. The Applicant is consenting for its withdrawal. There is consensus that the conviction can be set aside.

4. When the issue of the compounding charges as per the observations in case of **Damodar S. Prabhu Vs. Sayed Babalal H** in Criminal Appeal No. 963 of 2010, dated 03/05/2010 arises, learned Advocate Shri Agarwal submitted that the Applicant is facing insolvency proceedings and he is aged about 78 years old and thus charges may be exempted. Furthermore, he submitted that this conviction will come in his

way of the insolvency proceedings. The compounding charges cannot be exempted totally, we have to respect to the observations of the Hon'ble Supreme Court, the purpose to encourage the parties to settle the dispute as early as possible.

5. Considering the facts, I deem it appropriate to direct the Applicant to deposit 1 % of the cheque amount before the MHALSA.

6. In view of that following order is passed:-

ORDER

- (i) The Applicant and Respondent No. 1 are permitted to compound the offence.
- (ii) The conviction thereby imposing rigorous imprisonment of three months by the Court of the Sessions Court, Pune is set aside.
- (iii) The Complainant-Respondent is permitted to withdraw the amount of Rs. 50,000/- from the Appellate Court and the amount of Rs. 3,32,000/- from this Court alongwith accrued interest.
- (iv) Let Office to transfer the amount to the bank account of Respondent No. 1 on giving necessary bank details and necessary documents.
- (v) Let the Applicant to deposit 1% of the amount of

the cheque i.e. Rs. 2,500/- with the Office of the
MHALSA within a period of two weeks from today.

7. Revision is disposed of.
8. Interim application, if any, also stands disposed of.

[S. M. MODAK, J.]