

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

**CRIMINAL WRIT PETITION NO. 2639 OF 2016
WITH
CRIMINAL REVISION APPLICATION NO. 442 OF 2016**

Neeta Manish Vora ...Petitioner

Versus

Madhavdas M.K. And Anr. ...Respondents

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Mr. Jayant Bardeskar, Advocate for the Applicant.

Ms. Jahnvi Vora i/by Mr. Yashpal Jain, Advocate for Respondent No.1.

Mr. Y. Y. Dabake, APP for the Respondent – State.

CORAM : PRAKASH D. NAIK, J.

DATE : 29th JANUARY, 2024.

P.C.:

1. The revision applicant and Accused No.2 Manish Vora were convicted for offence under Section 138 of Negotiable Instruments Act, 1881 (for short 'N.I. Act') vide Judgment and Order dated 10th March, 2011 passed by learned Metropolitan Magistrate 6th Court, Mazgaon, Mumbai in C.C. No.1872/SS/2007 and sentenced to suffer simple imprisonment of one month each and pay fine of Rs.5,00,418/- and in default of payment of fine, to suffer simple imprisonment for one month.

2. The revision applicant and Accused No.2 preferred Criminal Appeal No.75 of 2011 and 76 of 2011 before Court of

Sessions for Greater Bombay challenging the Judgment of trial Court. The original complainant filed Criminal Revision Application No.114 of 2011 before the Sessions Court challenging inadequate sentence. The learned Sessions Judge vide Judgment and Order dated 29th July, 2016 allowed the Appeal No.75 of 2011 preferred by the Accused No.2 Manish Vora and conviction against him was set aside. The Appeal preferred by the revision applicant was dismissed. The Revision Application No.114 of 2011 preferred by the complainant was partly allowed. The Judgment and Order passed by learned Magistrate was modified. The Accused No.1 was sentenced to suffer simple imprisonment for one month and directed to pay amount of Rs.9,30,836/- as compensation to the complainant.

3. The Criminal Revision Application No.442 of 2016 is preferred before this Court challenging the Judgments of trial Court and Sessions Court. The Criminal Writ Petition No.2639 of 2016 is preferred by convict challenging order of enhancement passed by Sessions Court.

4. During the pendency of this proceedings, the parties have arrived at settlement and executed consent terms. Vide Order dated 12th June, 2018, this Court had recorded that the parties have

arrived at settlement and the consent terms were taken on record. The complainant and Accused were present in the Court and they have confirmed the execution of consent terms. It was agreed between the parties that the claim of complainant is settled for an amount of Rs.10,00,000/-. The revision applicant had deposited Rs.6,00,000/- and for the balance amount of Rs.4,00,000/- it was agreed that the said amount will be paid in three installments on 8th July, 2018, 8th August, 2018 and 8th September, 2018. Since, the balance amount was to be paid to the complainant in future course of time the revision application was kept pending by permitting the complainant to withdraw the amount of Rs.6,00,000/- deposited by the revision applicant subject to the final decision of the revision application.

5. It is submitted that during the pendency of this proceedings the complainant and partners of complainant's firm have expired. However, in view of settlement the balance amount of Rs.4,00,000/- as recorded in Order dated 12th June, 2018 was paid to the complainant when he was alive. It is submitted that since the entire amount is paid to the complainant and in view of consent terms executed between the parties this proceedings can be disposed off by allowing the Petition/Revision Application and

setting aside the Judgment of conviction.

6. Considering the aforesaid circumstances, Petition and Revision Application can be disposed off by setting aside the Judgment of conviction.

ORDER

- i. Criminal Revision Application No.442 of 2016 is allowed;
- ii. The Judgment and Order dated 10th March, 2011 passed by learned Metropolitan Magistrate 6th Court, Mazgaon, Mumbai as well as the Judgment and Order dated 29th July, 2016 passed by the learned Additional Sessions Judge, Greater Bombay are set aside.
- iii. In view of the settlement the Applicant is acquitted for the offence under Section 138 of N.I. Act.
- iv. Criminal Revision Application and Criminal Writ Petition stand disposed off.

(PRAKASH D. NAIK, J.)