
(2011) 07 BOM CK 0012

In the Bombay High Court

Case No : Criminal Revision Application No. 151 of 2011

Santosh Patait

APPELLANT

Vs

The State of Maharashtra and Narhari Komatwar

RESPONDENT

Date of Decision : 20-07-2011

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138, 147

Citation : (2012) 1 BC 524 : (2012) BomCR(Cri) 499

Hon'ble Judges : Shrihari P. Davare, J

Bench : Single Bench

Advocate : S.B. Ghatol Patil, for the Appellant; B.V. Wagh, Assistant Public Prosecutor for Respondent No. 1 and M.R. Sonwane, for the Respondent

Judgement

Shrihari P. Davare, J.—Rule. Rule is made returnable forthwith. With the consent of the learned Counsel for the parties taken up for final hearing.

2. Shri M.R. Sonawane, advocate filed the Vakalatnama for Respondent No. 2 and same is taken on record. Moreover, the applicant and Respondent No. 2 herein have filed the compromise purshis for compounding the offence and same is also taken on record and marked as document "X" collectively.

3. The applicant i.e. original accused has filed the present Criminal Revision Application challenging the conviction and sentence imposed upon him by way of judgment and order dated 16.1.2007, rendered by learned Judicial Magistrate, First Class, Purna, in S.C.C. No. 323 of 2006, thereby convicting him for the offence punishable u/s 138 of the Negotiable Instruments Act and sentencing him to suffer rigorous imprisonment for six months and to pay fine of Rs. 1,000/, in default of payment of fine, to suffer further simple imprisonment for ten days; and also assailing the judgment and order, dated 28.6.2011, passed by the learned Sessions Judge, Parbhani, in Criminal Appeal No. 13 of 2007 filed by the applicant, thereby modifying the judgment and order of the Trial Court and convicting the applicant herein for the offence punishable u/s 138 of the Negotiable Instruments Act and sentencing him to suffer rigorous imprisonment

for three months and to pay fine of Rs. 80,000/and also directing that after recovery of the said fine amount, an amount of Rs. 73,000/be paid to the complainant from the said amount as compensation and also directing that the balance amount of Rs. 7,000/therefrom, be confiscated to the State as fine amount.

4. It is alleged that Respondent No. 2 i.e. original complainant supplied the bricks of Rs. 1,00,000/to the applicant/accused, who paid Rs. 27,000/to the complainant and also gave a cheque for Rs. 73,000/on 30.1.2006 and requested the complainant to present the said cheque for clearance in July, 2006. Accordingly, the complainant i.e. Respondent No. 2 presented the said cheque for encashment, but same was dishonoured and returned unpaid with the reason, "funds insufficient". Hence, the complainant issued legal notice to the accused by Registered Post A.D. through advocate on 7.8.2006 and called upon the accused to make the payment of said cheque within 15 days from the date of receipt of the same and said notice was received by the applicant herein on 12.8.2006. However, the accused did not make the payment of the said cheque within the prescribed period. Hence, the complainant filed the complaint against the accused u/s 138 of the Negotiable Instruments Act.

5. The accused appeared therein and his plea was recorded and the accused pleaded to be innocent and claimed to be tried.

6. After considering the oral and the documentary evidence on record, as well as rival submissions advanced by the advocates for the parties, the learned Judicial Magistrate, First Class, Purna convicted the applicant i.e. original accused for the offence punishable u/s 138 of the Negotiable Instruments Act and sentenced him as afore stated by way of judgment and order, dated 16.1.2007.

7. Being aggrieved and dissatisfied by the judgment and order of conviction and sentence, the applicant i.e. original accused preferred Criminal Appeal No. 13 of 2007 before the learned Sessions Judge, Parbhani. However, after hearing the rival submissions advanced by the learned Counsel for the parties, the said appeal also came to be dismissed by the learned Sessions Judge, Parbhani on 28.6.2011 and the judgment and order of conviction and sentence, passed by the learned Trial Judge was modified to the extent, as mentioned herein above.

8. Feeling aggrieved and being dissatisfied by the afore said judgment and order, rendered by the learned Sessions Judge, Parbhani, the applicant has preferred the present Criminal Revision Application, assailing the conviction and sentence imposed upon the applicant by the learned Sessions Judge, Parbhani, as well as dismissal of the appeal filed by the applicant herein by the learned Sessions Judge, Parbhani, modifying the conviction and sentence as afore said.

9. During the pendency of the said Revision Application, the applicant i.e. original accused and Respondent No. 2 i.e. original complainant filed the compromise purshis for compounding the offence today in the court and same is taken on record and marked as document "X" as afore said collectively. The applicant and

Respondent No. 2 are present today in the court in person and they admitted the contents of the said compromise purshis, as well as their respective signatures thereon, as well as Respondent No. 2 i.e. original complainant also admitted the execution of receipt at Exh. "C1" annexed to the said compromise purshis and his signature thereon. The said compromise purshis recites that it is agreed between the parties that the applicant i.e. the accused has to pay Rs. 73,000/to the Respondent No. 2 i.e. the amount under cheque and the said amount has been paid by the applicant to Respondent No. 2 and the complainant/Respondent No. 2 has acknowledged the same and received the said amount of Rs. 73,000/ and the copy of the receipt towards amount received is annexed along with said compromise purshis as Exh. "C1".

10. It is also recited in the said compromise purshis that in view of the compromise between the parties, the offence u/s 138 of the Negotiable Instruments Act and conviction thereupon be compounded by setting aside the judgment and order of conviction, passed by learned Sessions Judge, Parbhani, on 28.6.2011 in Criminal Appeal No. 13 of 2007; and also judgment and order, dated 16.1.2007 passed by the learned Judicial Magistrate, First Class, Purna, in S.C.C. No. 323 of 2006, and the applicant/accused be acquitted for the offence punishable u/s 138 of the Negotiable Instruments Act.

11. The offence u/s 138 of the Negotiable Instruments Act is permitted to be compounded in view of the provisions of Section 147 of the Negotiable Instruments Act, and hence, considering the contents of the afore said compromise purshis, there is no impediment in compounding the afore said offence, on payment of necessary compounding charges by the applicant herein.

12. In the circumstances, considering the contents of the compromise purshis, it is evident that the matter has been settled between the applicant and Respondent No. 2 and the applicant has paid the amount of cheque i.e. Rs. 73,000/to Respondent No. 2 and Respondent No. 2 has received the same and passed on the receipt dated 19.7.2011 therefor and copy thereof is annexed at Exh. "C1".

13. Hence, in the light of the afore said facts, the offence u/s 138 of the Negotiable Instruments Act, in the present matter, stands compounded, invoking the provisions of Section 147 of the Negotiable Instruments Act, and the conviction and sentence imposed upon the applicant herein, by way of judgment and order, dated 16.1.2007, rendered by the learned Judicial Magistrate, First Class, Puna in S.S.C. No. 323 of 2006 for the offence punishable u/s 138 of the Negotiable Instruments Act stands quashed and set aside, as well as the conviction and sentence inflicted upon the applicant by way of modified judgment and order, dated 28.6.2011, passed by the learned Sessions Judge, Parbhani, in Criminal Appeal No. 13 of 2007 stands quashed and set aside and the applicant/accused is acquitted thereof, subject to payment of necessary compounding charges by the applicant in the court and present Criminal Revision Application stands disposed of accordingly, and fine amount, if any paid by the applicant

herein, be refunded to him.

14. Rule is made absolute accordingly.