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

CRIMINAL REVISION APPLICATION NO. 380 OF 2002

Sushila Ramji Singh and Anr. .. Applicants
Versus
Vinodkumar D. Palrecha and Anr. .. Respondents

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- Mr. S.R. More, Advocate for Applicants.
 - Mr. Chandrakant D. Mali, APP for Respondent No.2 – State.
 - None for Respondent No.1.

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CORAM : MILIND N. JADHAV, J.

DATE : OCTOBER 07, 2024.

P.C.:

1. Heard Mr. More, learned Advocate for Applicants and Mr. Mali, learned APP for Respondent No.2 – State. None appears for Respondent No.1.

2. Considering the order dated 18.03.2024 having been passed by this Court, it is seen that notice which has been issued to Respondent No.1 has been returned unserved with remark ‘not found at given address and said shop was sold from last 12 years and the said Respondent’s whereabouts are not known.

3. Mr. More while drawing my attention to the order dated 18.03.2021 would submit that total fine amount involved is approximately Rs.7 lakhs. He would submit that Applicant was



directed by the learned Trial Court to pay a fine of Rs.7,00,000/-. He draws my attention to the judgement of the Trial Court dated 22.03.2001 appended at page No.34 – Annexure “C” to the Criminal Revision Application (for short “**CRA**”) and the operative part of the order on page Nos.47/48 thereof. It is seen that by virtue of the said judgment, Applicants have been directed to pay fine of Rs.7,00,000/-. Thereafter the Appeal against the said decision has been dismissed. It is seen that on the date of dismissal on 23.07.2002, Applicant had already deposited a sum of Rs.50,000/- and therefore time was given to the Applicants of four weeks for depositing the balance fine amount of Rs.6,50,000/-. Thereafter, it is seen that on 12.11.2002, Applicant deposited a further amount of Rs.1,00,000/- as per the orders of this Court. Record of the case shows that Applicant has deposited Rs.1,00,000/- with the Nazir of this Court on 10.10.2002. In that view of the matter, present CRA was admitted.

4. Mr. More, however would draw my attention to the decision of the Supreme Court in the case of *Meters and Instruments Private Limited and Anr. Vs. Kanchan Mehta*¹ and more specifically to paragraph No.18(iii) thereof to contend that in the absence of original complainant before the Court, this Court would have power to close the proceedings and discharge the accused in the absence of consent of complainant in the interest of justice.

¹ 2017 AIR (SC) 4594



5. Today, when the matter is called out for hearing none appears for Respondent No.1. In view of this, Mr. More persuades this Court to consider his Application and would submit that Applicant No.1 is a lady and after taking instructions he would submit that Applicants will deposit the balance fine amount of Rs.5,50,000/- within a period of eight weeks from today. If the above amount is deposited by the Applicant, this Court shall undoubtedly consider the guidelines given in the case of *Meters and Instruments Private Limited and Anr. (supra)* after hearing Respondent No.1.

6. However, it is seen that later by a Constitution Bench decision of the Supreme Court in the case of *Re: Expeditious Trial of Cases Under Section 138 of N.I. Act, 1881*² in paragraph No.20 it has been held that the decision in the case of *Meters and Instruments Private Limited and Anr. (1st supra)* is not good law in so far as it conferred power on the Trial Court to discharge an accused. However, thereafter the aforesaid five Judge Bench decision has been considered in the recent two Judge Bench decision of the Supreme Court in the case of *Raj Reddy Kallem Vs. The State of Haryana and Anr.*³ with respect to compounding and it is held that if the complainant does not agree for the compounding of the offence, the Courts cannot compel the complainant to give 'consent' for compounding of the matter. However, in the same decision the Supreme Court has held that if

² Suo Motu Writ Petition (Crl.) No.2 of 2020 decided on 16.04.2021.

³ Criminal Appeal No.2210 of 2024 decided on 08.04.2024.



complainant is adequately compensated, the Appeal cannot be kept pending. The Supreme Court further in that case holds that even though the complainant is unwilling to compound the case but, considering the totality of the facts and circumstances of that case it was of the view that the proceedings must come to an end and therefore allowed the Appeal, resultantly, quashing all proceedings against the Appellant against his conviction under Section 138 of the N.I. Act. Supreme Court infact in order to do complete justice, exercised its power under Article 142 of the Constitution of India.

7. The aforesaid decisions will have to be therefore considered by the Court before accepting the submissions made by Mr. More on the basis of the decision of the Supreme Court in the case of *Meters and Instruments Private Limited and Anr. (1st supra)*.

8. Considering the fact that notice has already been issued to Respondent No1, I direct issuance of fresh notice to Respondent No.1 in the meanwhile, so that Respondent No.1 can also be heard on the next adjourned date.

9. Stand over to **14th October 2024** for compliance and further hearing.

[MILIND N. JADHAV, J.]

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