

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

**CRIMINAL REVISION APPLICATION NO.325 OF 2014**

Nilesh Pandharinath Patil

...Applicant

Versus

Mr. Ramesh Ghanshyam Shah & Anr.

...Respondents

.....

Mr. Vinit Jain for the Applicant.

Ms Shakuntala S. Wadekar for Respondent No.1.

Ms R.V. Newton, APP for Respondent No.2-State.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.**

**DATE : 16<sup>th</sup> OCTOBER, 2015.**

**P. C. :**

Heard the learned counsel for the Applicant and the Respondent No.1.

2. The Applicant herein was an accused in S.C.C. No.1198/2004 filed before the 23<sup>rd</sup> Judicial Magistrate, First Class, Pune, for the offence punishable under section 138 of the Negotiable Instruments Act. The Applicant-accused has been held guilty of the offence punishable under section 138 of the Negotiable Instruments Act and sentenced to suffer simple imprisonment for three months and directed to pay compensation of Rs.7,00,000/-, in default to suffer

sentence of simple imprisonment for the period of six months. Appeal filed by the Applicant-accused has been dismissed vide judgment dated 29.9.2014. Aggrieved by the said order the Applicant-accused has preferred this revision application.

3. The subject cheque was issued in the name of G.M. Veneers and Ply, a proprietary concern. A complaint under section 138 of the Negotiable Instruments Act was filed by the Respondent No.1. The cause title reveals that the complainant has not specified whether complaint was filed by the complainant as a proprietor or as a power of attorney of the proprietor. Nonetheless, in the examination-in-chief P.W.-1 has deposed that he was a proprietor of G.M. Veneers while in the cross examination he claimed that the said proprietorship concern was in the name of Ghanshyam Shah and that he was the power of attorney of the said proprietary concern. The question therefore, arises as to whether the complaint was filed by the payee. Arguable points are raised. Hence, rule.

4. The Applicant-accused to furnish bail bond of Rs.15,000/- with one surety in the like amount to the satisfaction of Additional Sessions Judge, Pune.

5. At this stage, the learned counsel for the Respondent No.1 seeks leave to withdraw the amount deposited by the Applicant-accused before the Additional Sessions Judge, Pune. The learned counsel for the Applicant-accused objects for the withdrawal. However, considering the fact that the case is of the year 2004 and the cheque amount is of Rs.6,52,000/-, the Respondent No.1 complainant is entitled to withdraw the said amount on giving an undertaking that the said amount will be returned in case the Applicant-accused succeed in this revision. The learned Additional Sessions Judge, Pune, is directed to pay the amount deposited by the Applicant in C.C. No.1198 of 2004 to the Respondent No.1-complainant on filing proper application and on giving necessary undertaking by him.

6. At this stage, the learned counsel for the Applicant-accused and the Respondent No.1-complainant submit that they will explore the possibility of amicable settlement and agreed on not withdrawing the amount till the next date.

7. Stand over to **26.10.2015**.

**(ANUJA PRABHUDESSAI, J.)**