IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

CRIMINAL WRIT PETITION NO. 1155 OF 2014

Shivkumar S/o Anandrao Nilgirwar,
Age 40 years, Occ. Service,
R/o House No. 9/24, Velmapura,
Kinwat, Tq. Kinwat, Dist. Nanded. ...**Petitioner**

Versus

1. The State of Maharashtra.

2. Sow. Kiran s/o Laxmikant Sundargirwar,
Age 50 years, Occ. Business,
R/o Chetna Kirana & Ladies Emporium,
Old Cloth Line, Kinwat, Tq. Kinwat,
District Nanded. ...**Respondents**

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Shri. Ravindra B. Ade, Advocate for the petitioner
Shri. S. G. Nandedkar, APP for respondent/State
Shri. Ashish B. Shinde, Advocate for respondent No. 2
.....

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : MARCH 30TH, 2015.

ORAL JUDGMENT:-

. Heard. Rule. Rule made returnable forthwith with the consent of the parties.

2. The present petitioner happens to be the original complainant in S.C.C. No. 335 of 2012, filed by the petitioner

against respondent No. 2, for offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (in short "the NIA"). On 3rd April, 2014, the learned Judicial Magistrate First Class, seized with the matter, was apprised of the fact that there was every possibility of amicable settlement and hence, the learned JMFC was pleased to refer the matter to the Mediator. The complainant and the accused had consented for going through the process of mediation. On 14th July, 2014, the learned JMFC had observed that, the accused had not compounded the case since 24th July, 2014, within two-three dates from hearing and hence she was saddled with penalty of 10% of cheque amount. The learned JMFC had disposed of the complaint, acquitted the accused of the offence punishable under Section 138 of the NIA. The accused was directed to pay penalty of 10% of cheque till 30th July, 2014.

3. Being aggrieved by the said order, the original accused had filed Criminal Revision Application No. 72 of 2014. The learned Sessions Judge, Nanded, vide judgment and order dated 4th September, 2014, was pleased to allow

the revision and set aside the order dated 14th July, 2014. The learned Sessions Judge had further passed an order as follows:

> *"The Ld. Magistrate shall direct Income Tax Department to enquire whether respondent/complainant has paid Income Tax on the amount of Rs. 5,00,000/- allegedly paid to the petitioner for which the disputed cheque was issued."*

Being aggrieved by clause '03' of the operative order dated 4th September, 2014, the original complainant has filed the present writ petition.

4. The learned Counsel for the petitioner rightly submits that, the proceedings under Section 138 of the NIA were compromised between the parties. The complainant had withdrawn the complaint in good faith to continue to have good relations with the accused – respondent. It was not necessary for the learned Sessions Judge to enquire as to whether the said amount of Rs. 5,00,000/- was even disclosed to the Income Tax Authorities as, that would be a matter of evidence, which would be subject matter of the

trial under Section 138 of the NIA. In the present case, the said direction is unwarranted. It was a private transaction.

5. In the eventuality that the said amount is not disclosed in Income Tax Returns, the Income Tax Authority would take appropriate action in accordance with law as and when time arises. The direction passed by the Sessions Judge was without any jurisdiction and was not in consonance with any provisions of law and hence, the said clause '03' of the order dated 4th September, 2014, deserves to be quashed and set aside. In view of this, following order is passed.

ORDER

(i) The Petition is allowed in terms of prayer clause 'B)' of the petition.

Rule made absolute in above terms with no order as to costs. Petition stands disposed of accordingly.

(SMT. SADHANA S. JADHAV, J.)

sgp