

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

CRIMINAL WRIT PETITION NO.721 OF 2002

Vikramsinha Jaysingrao Khardekar

...Petitioner
(orig. accused)

Versus

Ramchandra Basappa Kharoshe &
Anr.

...Respondents

.....

Mr. Sagar A. Mane i/b. Mr. N.V. Bandiwadekar for the
Petitioner.

Ms R.V. Newton, APP for Respondent No.1-State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : 20th OCTOBER, 2015.

P. C. :

By this petition the Petitioner, who is an accused in C.C. No.228 of 1996 for the offence punishable under section 138 of the Negotiable Instruments Act has challenged the impugned judgment dated 13th March, 2002 whereby the learned Ad-hoc Additional Sessions Judge, Kolhapur, has set aside the order dated 11th September, 2001 passed by the learned Magistrate at Peth Vadgaon dismissing the complaint filed by the Respondent No.1 under section 138 of the Negotiable Instruments Act.

2. The Respondent No.1-complainant had filed complaint against the Petitioner herein for the offence punishable under section 138 of the Negotiable Instruments Act. By order dated 8th April, 1996 the learned Magistrate had issued process under section 138 of the Negotiable Instruments Act. The Petitioner herein filed an application (Exh.37) praying to discharge him of the offence punishable under section 138 of the Negotiable Instruments Act mainly on the ground that the complaint was barred by limitation. The learned Magistrate by order dated 11th September, 2001 allowed the said application and dismissed the complaint as time barred. The Respondent No.1-complainant challenged the said order in criminal revision application No.256 of 2001. The learned Ad-hoc Additional Sessions Judge, Kolhapur, allowed the said revision and as a consequence thereof, set aside the impugned order dated 11th September, 2001 passed by the learned Magistrate in C.C. No.228 of 1996. Aggrieved by the said order of the Ad-hoc Additional Sessions Judge, Kolhapur, the Petitioner-accused has preferred this petition.

3. Heard the learned counsel for the Petitioner. The only question involved in this petition is whether the Magistrate, having taken cognizance of the offence could recall the order of process issued

under section 138 of the Negotiable Instruments Act. It is to be noted that the learned Magistrate had issued process under section 138 of the Negotiable Instruments Act, which is a summary trial proceedings. The learned Magistrate had already taken cognizance of the offence and having done so he had no powers to recall the order. In the instant case, the Magistrate has not exercised powers under section 259 of the Criminal Procedure Code to convert summons case into a warrant case. The learned Magistrate was therefore, not justified in dismissing the complaint and discharging the accused of the offence punishable under section 138 of the Negotiable Instruments Act. The learned Sessions Judge has considered this aspect and I do not find any illegality in the order of the learned Ad-hoc Additional Sessions Judge, Kolhapur.

4. Under the circumstances and in view of the decision supra, the petition is dismissed. Rule is discharged. Needless to state that all the points and contentions as regards the limitation are left open and can be raised at the stage of trial.

(ANUJA PRABHUDESSAI, J.)