

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

**CRIMINAL APPLICATION NO.554 OF 2018
IN
CRIMINAL REVISION APPLICATION NO.548 OF 2002**

Siddeshwar Bhimashankar UpaseApplicant

versus

Rajeshkhar Irappa Bhogade ... Respondents

.....

- Mr.Priyal G. Sarda, Advocate for Applicant.
- Mr.Prabhakar Jadhav i/b. Mr.V.P. Sawant for Respondent No.1.
- Ms.S.S. Kaushik, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 29th OCTOBER, 2018.

P.C. :

1. The Respondent No.1 was convicted by the Judicial Magistrate First Class, Court No.2, Solpaur in S.T.C. No.233/98 for commission of offence punishable u/s 138 of Negotiable Instruments Act, 1881. The Respondent No.1 was sentenced to suffer simple imprisonment for one year and to pay a fine of Rs.3,20,000/- and in default to suffer simple imprisonment for one

year. The amount of Rs.1,65,000/- was directed to be given to the Applicant herein out of fine amount recovered from Respondent No.1.

2. Respondent No.1 had challenged the said Judgment and Order before the Court of Sessions, Solapur, vide Criminal Appeal No.42/2000. The learned 1st Ad-Hoc Additional Sessions Judge, Solapur, by his Judgment and Order dated 26/07/2002, allowed the Appeal. The conviction and sentence passed against the Respondent No.1 was set aside and Respondent No.1 was acquitted of the offence punishable u/s 138 of Negotiable Instruments Act.

3. The Applicant has filed this Revision Application in the year 2002. Rule was issued in this Revision Application on 16/11/2006 by this Court (Coram : S. C. Dharmadhikari, J.) Hearing was expedited.

4. By the present Application the Revision Applicant is

seeking directions to permit the Applicant to convert Revision Application into an Appeal.

5. Heard learned Counsel Mr.Priyal Sarda for Applicant and learned Counsel Mr.Prabhakar Jadhav h/f Mr.V. P. Sawant for Respondent No.1.

6. Section 378(1) r/w 378(4) provides that an Appeal against the Appellate Court's order of acquittal is maintainable. Mr.Sarda has relied on sub-section 5 of section 401 of Cr.P.C. which read thus;

401. High Court's powers of revision -

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat

the application for revision as a petition of appeal and deal with the same accordingly.

7. Considering this provision it is clear that instead of Appeal against acquittal, the Revision Applicant has preferred the Criminal Revision Application. The Revision Application is already admitted in the year 2006. Considering all these aspects, I am inclined to allow this Application. Hence the following order :

ORDER

1. Criminal Application No.554/18 is allowed in terms of prayer clause (b).
2. For further consideration and passing orders, the matter be placed before the Bench taking the Criminal Appeals.
3. Criminal Application is disposed of in the aforesaid terms.

(SARANG V. KOTWAL, J.)