

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

CRIMINAL WRIT PETITION NO.1065 OF 2019

Permashwar s/o Zipru Sonawane,
Age : - 49 years, Occ. Agri.
R/o. Borvihar, Tal. & Dist. Dhule.

... PETITIONER
(Ori. accused)

VERSUS

1. The State of Maharashtra
2. Anandkumar s/o Bisanlal Warma,
Age – 39 years Occu. Business,
R/o. Household No.1712, Agra Road,
Dhule, Tal & Dist. Dhule.
3. Mandabai w/o Trambak Patil,
Age – 36 years Occu. Household,
R/o. Eklavya Shikshan Prasarak Sansatha,
Borvihar, Tal. & Dist. Dhule.

... RESPONDENTS

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Advocate for Petitioner : Mr. Patil Ujwal Subhash
APP for Respondent/State: Mr. A.P. Basarkar

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CORAM : MANGESH S. PATIL, J.

DATE : 27.09.2019

JUDGMENT :

Heard both the sides. Rule. The Rule is made returnable forthwith. With the consent of both the sides the matter is heard finally at the stage of admission.

2. In a complaint instituted by the respondent under Section 138 of the Negotiable Instruments Act, by the order dated 11.06.2014 the case was dismissed in default for want of steps and the petitioner and the other accused were acquitted under Section 256 of the Code of Criminal Procedure. The respondent no.2 challenged that order in revision. By the impugned judgment and order the revision is partly allowed, only to the extent of the present petitioner who was the accused no.1 therein and directed the complaint to be restored *qua* him. Being aggrieved he has preferred this writ petition.

3. The learned advocate for the petitioner submits that since the order by the Magistrate had resulted in acquittal, the only remedy available for the respondent no.2 was to prefer an appeal under Section 378 of the Code of Criminal Procedure and instead he had preferred revision which was not maintainable and ought not to have been allowed.

4. After hearing the arguments it transpires that contrary view expressed by the Single Judges of this Court were referred to and has now been settled by a Division Bench of this Court in **Gajanan Parshuram Chopade Vs. Mahatma Jyotirao Phule Gramin Bigarsheti Sahakari Patsanstha Maryadit ; 2009 (1) Mh. L.J. 845** wherein the earlier inconsistent views of the single Judges were

considered and it has been laid down in paragraph no.12 as under:

12. For the aforesaid reasons and considering sections 256 and 378 of the said Code of 1973, we are clearly of the opinion that when an order of acquittal is passed under section 256, the only remedy that the complainant would have, is to file an appeal. No revision is maintainable. In our view, the view taken by the learned Single Judge in Mahendra Indermal Borana Vs. Anil Shankar Joshi and another, reported in (2004 (1) Bombay Cases Reporter (Cri)-805) is not the correct view and hence overruled.

5. In view of such settled legal position, the revision preferred by the respondent no.2 was not maintainable and ought not to have been allowed for this reason alone.

6. The Writ Petition is allowed. Impugned order is quashed and set aside. Needless to state that the respondent no.2 may have his remedy of appeal subject to the point of limitation. It is clarified that no observation has been made touching the merits.

7. Parties to act on the authenticated copy.

(MANGESH S. PATIL, J.)