

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.4089 OF 2018

**KARMAVIR BHAUSAHEB HIRAY SHIKSHAN)
SANSTHA, DABHADI AND ANR.)...PETITIONERS**

V/s.

SUMATI A. NIKAM AND ANOTHER)...RESPONDENTS

Mr.Tejas Dande a/w. Mr.Bharat Gadhavi i/b. Tejas Dande and Associates, Advocate for the Petitioners.

Mr.Laxman Deshmukh, Advocate for Respondent No.1.

Mr.A.R.Patil, APP for the Respondent – State.

CORAM : A. M. BADAR, J.

DATE : 9th JANUARY 2020

ORAL JUDGMENT :

1 Heard. Rule. Rule made returnable forthwith. Heard finally by consent of parties.

2 By this petition, the petitioner/accused in S.C.C.No./1033/2009 is challenging the order passed by the learned Additional Sessions Judge, Malegaon, District Nashik, thereby allowing the revision petition filed by the respondent/original complainant and restoring the criminal complaint on the file of the learned Judicial Magistrate First Class, Court Room No.3, Malegaon, for further hearing.

3 Heard the learned counsel appearing for the petitioner/original accused. He drew my attention to the Division Bench judgment of this court in the matter of **Gajanan Parshuram Chopade vs. Mahatma Jyotirao Phule Gramin Bigarsheti Sahakari Patsanstha Maryadit, Barloni**¹ and argued that revision petition as framed and filed was not maintainable, in view of the fact that the complaint for the offence punishable under Section 138 of the Negotiable Instruments Act was dismissed for want of prosecution in exercise of powers under Section 256 of the Code of Criminal Procedure by the learned trial Magistrate.

1 2008 (4) Mh.L.J.(Cri.) 622

4 As against this, the learned counsel appearing for the respondent/original complainant opposed the petition by contending that the revisional court has properly appreciated the facts and allowed the revision petition.

5 I have considered the submissions so advanced and also perused the record made available including the impugned order.

6 Complaint for the offence punishable under Section 138 of the Negotiable Instruments Act was filed by the respondent Sumati Nikam against the petitioners and during the course of hearing of that complaint, the same came to be dismissed for want of prosecution on 7th October 2013 as the respondent/original complainant could not attend the court on that day. Parties are not at dispute that the complaint came to be dismissed in exercise of powers under Section 256 of the Code of Criminal Procedure by the learned trial Magistrate. Feeling aggrieved by the said

dismissal of complaint, the respondent/original complainant preferred the revision petition before the learned Additional Sessions Judge and the same came to be allowed by the impugned judgment and order.

7 In the matter of **Gajanan Parshuram Chopade (supra)** the Division Bench of this court has categorically held that when an order of acquittal is passed under Section 256 of the Code of Criminal Procedure, the only remedy that the complainant would have is to file an appeal and revision challenging such order is not maintainable.

8 In this view of the matter, the impugned judgment and order which suffers from error of law cannot be sustained. Hence, I proceed to pass the following order :

ORDER

i) The petition is allowed.

- ii) The impugned order dated 23rd July 2018 passed by the learned Additional Sessions Judge, District Nashik, in Criminal Revision Application No.115 of 2013 between the parties is quashed and set aside.
- iii) Rule is made absolute in above terms.
- iv) Needless to mention, this order shall not come in the way of the respondent/original complainant in pursuing her remedy according to law.

(A. M. BADAR, J.)