

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL REVISION APPLICATION NO. 121 OF 2020

Shri Vishwambhar Prabhakar Sonone,
Aged : Major, Occupation : Contractor,
R/o. Janefal, Tq. Mehkar, Dist. Buldana.

.... **APPELLANT.**

// VERSUS //

Shri Manoj Shyamsundar Lohiya,
Age 30 years, Occupation : Business,
R/o. Mehkar, Tq. Mehkar,
District : Buldana.

.... **RESPONDENT.**

Shri Manoj P. Kariya, Advocate for Applicant.
Shri A.A.Dhawas, Advocate for the respondent.

CORAM : ANIL S. KILOR, J.
DATED : OCTOBER 10, 2022.

ORAL JUDGMENT :

1. Heard.
2. **ADMIT.**
3. Heard finally by consent of the learned counsel for the parties.

3. This revision takes exception to the judgment and order dated 07/12/2019 passed by Additional Sessions Judge, Mehkar in Criminal Appeal No. 1/2019, dismissing the appeal arising out of the judgment and order passed by learned Judicial Magistrate First Class, Mehkar in Summary Criminal Case No. 848 of 2006, dated 06/09/2010 convicting the appellant for the offence punishable under Section 138 of the Negotiable Instruments Act and thereby sentencing him to suffer simple imprisonment for two months and fine of Rs.40,000/-, in default to suffer simple imprisonment for 15 days.

4. After going through the impugned judgment and order it is evident that the accused and his learned counsel were absent and without hearing the appellant the first appellate Court proceeded to dismiss the appeal. Thus, it is clear that the appeal was decided, though on merits, but in absence of the appellant.

5. It is well settled law that the appeal against conviction can be disposed of on merits only after hearing the appellant or his counsel. When there is no representation for the appellant, the

appellate Court ought to have appointed an Amicus Curiae. The Hon'ble Supreme Court of India in catena of judgments has held accordingly. For instance, I may refer to paragraph 5 of the judgment in the case of *Shankar ..vs.. State of Maharashtra*, passed in **Criminal Appeal No. 1106 of 2019**, dated 23rd July 2019, which reads thus:

“5. When the accused has preferred the appeal against the conviction, the appeal can be disposed of on merits only after hearing the appellant or his counsel. When there was no representation for the appellant, in our considered view, the High Court ought not to have disposed of the case on merits. It was held in 2005 (11) SCC 185 titled Mangat Singh vs. State of Punjab that where the advocate for the appellant is absent on the date of hearing, the Court shall either appoint an amicus curiae and then decide the appeal. Once the appeal against the conviction is admitted, it is the duty of the Appellate Court either to appoint an advocate as amicus curiae or to nominate a counsel through Legal Services Authority and hear the matter on merits and then dispose of the appeal. When the appellant was not represented by the advocate, in our view, the High Court ought not to have decided the matter on merits and the impugned order is liable to be set aside and the matter is remitted back to the High Court. ...”

6. In that view of the matter, I pass the following order:
 - a) The Criminal Revision Application is **allowed**.

- b) The judgment and order dated 7th December 2019 passed by Additional Sessions Judge, Mehkar in Criminal Appeal No.1 of 2019 is hereby quashed and set aside.
- c) Criminal Appeal No.1 of 2019 is restored back to the file of the learned Additional Sessions Judge, Mehkar, District : Buldana, to decide the same on merits after hearing the appellant.
- d) The amount deposited by the appellant in this Court be transferred to the Trial Court.

The Criminal Revision Application stands **disposed of** accordingly.

(ANIL S. KILOR, J)

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