

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

CRIMINAL REVISION APPLICATION NO. 42 OF 2018

Mangesh Tukaram Sawant ... Applicant
Versus
The State of Maharashtra & Anr. ... Respondents

**WITH
INTERIM APPLICATION NO. 985 OF 2019
IN
CRIMINAL REVISION APPLICATION NO. 42 OF 2018**

Kamal Jaswantlal Sheth ... Applicant
Versus
The State of Maharashtra & Anr. ... Respondents

Mr. Kiran Varma a/w Sachin Mhatre, Rochelle Fernandes and
Ishita Kamath for the Applicant in Revision Application.
Ms. M. H. Mhatre, APP for Respondent No.1-State.
Mr. Manohar H. Ramsinghani a/w Mr. Abdul K. Millwala, Mr.
Praveen Vankudoth and Abhishek Jadhav for Respondent No.2.

CORAM: R. N. LADDHA, J.

DATE : 30 OCTOBER 2023

P.C. :-

. Heard Mr Kiran Varma, the learned Counsel for the
applicant/original accused; Ms M. H. Mhatre, learned Additional
Public Prosecutor for respondent No.1-State; and Mr Manohar H.
Ramsinghani, the learned counsel for respondent No.2.

2. This revision application is filed against the judgment and order dated 9 January 2018 passed by the Additional Sessions Judge, Mumbai, in Criminal Appeal No.317 of 2014 and the judgment and order dated 7 March 2014 passed by the learned Metropolitan Magistrate, 63rd Court, Andheri, Mumbai, in CC No.969/SS/2010 whereby, the applicant/accused was convicted under Section 138 of the Negotiable Instruments Act, 1881 (for short 'NI Act').

3. The learned Counsel for the contesting parties jointly submitted that during the pendency of the present revision application, the applicant and respondent No.2 have resolved their dispute amicably and executed consent terms dated 30 October 2023 and have placed a copy thereof on record. The learned Counsel for respondent No.2 submitted that respondent No.2 has no objection to setting aside the concurrent judgment and order of conviction passed by the lower Courts and also tendered a copy of his consent affidavit. Respondent No.2 is present in person and is identified by his Counsel. When questioned, he confirmed that he has no objection to set aside the conviction of the applicant. The parties agree to abide by the terms and conditions of the consent terms executed between them. They are identified by their respective counsel.

4. The learned APP for respondent No.1 submits that appropriate orders may be passed.

5. The offence under Section 138 of the NI Act is limited to two private parties involved in a commercial transaction. However, the intent of the legislature in providing a criminal prosecution for dishonour of cheque is to ensure the credibility of transactions involving negotiable instruments. It is a settled position in law that Section 138 primarily aims to ensure compensation to the complainant. The NI Act also allows parties to enter into a compromise, both during the pendency of the complaint and even after the conviction of the accused. Since the parties have amicably settled their dispute, this Court sees no difficulty in setting aside the conviction of the applicant.

6. In these circumstances, the judgment and order dated 7 March 2014 passed by the learned Metropolitan Magistrate, 63rd Court, Andheri, Mumbai, in CC No.969/SS/2010 and the judgment and order dated 9 January 2018 passed by the Additional Sessions Judge, Mumbai, in Criminal Appeal No.317 of 2014, confirming the conviction of the applicant, are set aside and the applicant/accused is acquitted subject to the payment of cost of Rs.25,000/- to the High Court Legal Services Authority, Mumbai by the applicant within a period of four weeks from the date of uploading this order. The parties agree to abide by the terms and conditions mentioned in the consent terms. As agreed between the parties, the amount deposited by the applicant/accused in the Courts with the interest accrued thereon is permitted to be released in favour of respondent No.2/complainant.

7. Accordingly, the present revision application stands disposed of in the aforesaid terms. Pending interim application also stands disposed of.

R. N. LADDHA, J.

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