

Ghuge

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

WRIT PETITION NO.2977 OF 2022

Ramesh Kashiram Pendkalkar ... Petitioner
V/s.
Vilas Dattaram Bhogaokar and Anr ... Respondents

Mr. Ujwal Agandsurve for the petitioner.

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

CORAM : AMIT BORKAR, J.

DATED : MARCH 27, 2023

PC.:

1. The challenge in this petition is to refusal on the part of Session Judge to consider Miscellaneous Application No.3265 of 2019 as being not pressed.
2. The facts giving rise to calling the writ petition are as under :-

The petitioner is complainant in a proceeding under Section 138 of the Negotiable Instruments Act, 1881. The respondent No.1 is a accused. On 21st January, 2012 the petitioner filed complaint under Section 138 of the Negotiable Instruments Act, 1881 before the Magistrate. By the Judgment and Order dated 20th August, 2018 the Magistrate convicted respondent No.1 and directed him to undergo simple imprisonment for Two months and to pay compensation of Rs.1,25,000/-. Aggrieved thereby respondent No.1 filed Criminal Appeal No.762 of 2018 before the Session

Judge. During the pendency of the appeal parties arrived at settlement by signing consent terms. Under consent terms accused No.1 agreed to pay amount of Rs.1,20,000/- in 12 monthly equal installments of Rs.10,000/- till 15th December, 2019. Based on the consent terms, the Judgment and Order of 28th Court, Esplande, Mumbai in CC No.2800080/SS/2012 was set aside and the respondent No.1 was acquitted for offence under Section 138 of the Negotiable Instruments Act, 1881.

3. The applicant based on non fulfillment of consent terms filed an application before Sessions Court. The applicant not being aware of legal rights, withdrew the application seeking liberty to adopt appropriate legal action. According to the applicant, such concession was made by the applicant being not aware of the legal rights conferred on him under law. The applicant therefore, has challenged the rejection of application by filing present writ petition.

4. This Court on 22nd November, 2022 issued notice for final disposal to the respondent No.1. Office remark dated 23rd March, 2023 shows that the notice of this proceeding has been duly served on respondent No.1. Despite service neither respondent No.1 nor his advocate appears before this Court.

5. The applicant in paragraph 8 has stated on oath that the cheques dated 15/04/2019, 15/05/2019, 15/06/2019, 06/07/2019, 10/07/2019 and 15/07/2019 issued by respondent No.1 under consent terms were dishonored. In view of absence of dispute as to statement on oath in paragraph 8, the statements will

have to be considered as correct. If this be so the order dated 2nd January, 2018 allowing the Criminal Appeal No.762 of 2018 setting aside of conviction and sentence in CC No.2800080/SS/2012 deserves to be set aside.

6. I, therefore, pass following order :-

- i) The impugned order dated 2nd January, 2019 passed by Sessions Judge, Greater Mumbai in Criminal Appeal No.762 of 2018 is quashed and set aside.
- ii) Criminal Appeal No.762 of 2018 is restored on the file of Sessions Judge, Greater Mumbai.
- iii) The applicant remain present before the Session Judge on 10th April, 2023 and shall place copy of this order on record.
- iv) The Sessions Judge shall decide the Criminal Appeal No.762 of 2018 in accordance with law.

7. The Writ Petition shall stands disposed of in the above terms.
No costs.

(AMIT BORKAR, J.)