

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.4026 OF 2014**

Mr Manish Madanlal Joshi,
Age. 47 years, Occ: Business,
R/o. Deshmukh Plots, Joshi Mansion
Building, Khamgaon,
District. Buldhana.

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... Petitioner.

Versus

1. Mr. Vasantlal Kanhyalala Joshi,
Age. 65 years, Occ: Service,
R/o. Manager Hotel Chetna,
Budhwar Peth, 884, Pune.

2. State of Maharashtra
(Notice to be served on the A.P.P.
High Court, Mumbai)

... Respondents.

Mr Zoheb Merchant i/by Jaivant Chandrani & Associates, for
the Petitioner.

Mr Prashant G. Karande a/w. Mr. Praful S. Pawar, for
Respondent No.1.

Mr RM Pethe, APP for Respondent No.2-State.

**Coram: R. N. Laddha, J.
Date: 13 December 2023.**

P.C.:

Heard Mr Zoheb Merchant, the learned Counsel for the

petitioner/accused; Mr Prashant G. Karande, the learned Counsel for respondent No.1/complainant; and Mr RM Pethe, learned Additional Public Prosecutor for respondent No.2-State.

2. By a Judgment and Order dated 10 May 2013 passed by the learned Judicial Magistrate First Class, Court No.2, Pune, in Summary Criminal Case No. 45919 of 2006, the petitioner/ accused was convicted for the offence under section 138 of the Negotiable Instruments Act, 1888 (for short, 'NI Act'), sentenced to suffer simple imprisonment for three months and pay a fine of Rs.4,00,000/-. The petitioner challenged this Judgment and Order in Criminal Appeal No.289 of 2012 before the learned Additional Sessions Judge, Pune. By a Judgment and Order dated 18 August 2014, the learned Additional Sessions Judge, Pune, confirmed the conviction. The petitioner now challenges this judgment and order in the present Petition.

3. The learned Counsel for the contesting parties jointly submitted that during the pendency of the present Petition, the petitioner and respondent No.1 have resolved their dispute amicably and executed consent terms dated 25 November 2023 and have placed a copy thereof on record.

The learned Counsel for respondent No.1 submitted that respondent No.1 has no objection to setting aside the judgment and order dated 18 August 2014 passed by the learned Additional Sessions Judge, Pune, in Criminal Appeal No.289 of 2012. Respondent No.1 appeared through video-conferencing and is identified by his Counsel. When questioned, he stated that he has no objection to setting aside the petitioner's conviction. The parties have agreed to abide by the terms and conditions of the consent terms. They are identified by their respective Counsel.

4. The learned APP for respondent no.2 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, to ensure the credibility of transactions involving negotiable instruments, the legislature provided for criminal prosecution for dishonouring a cheque. It is a settled position in law that Section 138 primarily aims to compensate the complainant. The NI Act does not prohibit the parties from entering into a compromise either during the complaint's pendency or after the accused's conviction. As the parties have amicably resolved and settled their dispute, this Court sees no

difficulty in setting aside the petitioner's conviction.

6. In these circumstances, the judgment and order dated 18 August 2014 passed by the learned Additional Sessions Judge, Pune, in Criminal Appeal No.289 of 2012, confirming the conviction of the petitioner, and the judgment and order dated 10 May 2013 passed by the learned Judicial Magistrate First Class, Court No.2, Pune, in Summary Criminal Case No. 45919 of 2006, are set aside, and the petitioner is acquitted, subject to the payment of cost of Rs.75,000/- to the High Court Legal Services Authority, Mumbai, by the petitioner within four weeks from the date of uploading this Order. The parties agree to abide by the terms and conditions mentioned in the consent terms dated 25 November 2023. As agreed between the parties, the amount deposited by the petitioner/accused in the Court, along with interest accrued thereon, if any, is permitted to be withdrawn by the petitioner.

7. The present Criminal Writ Petition is disposed of accordingly.

[R. N. Laddha, J.]