

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.162 OF 2017
WITH
CRIMINAL APPLICATION NO.640 OF 2016
IN
CRIMINAL REVISION APPLICATION NO.162 OF 2017**

Riyaz A. Rahiman Jamadar ...Applicant

Versus

Kallappa Bhimanna Medidar & Anr ...Respondents

Mr. Samarth Moray, i/b Jyoti Devalekar, Advocate for Applicant.

Mr. Shrishail Sakhare, Advocate for Respondent No.1.

Mr. A.R. Patil, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 8th SEPTEMBER 2023

PC :

1. The Applicant was an Accused in a private complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short "N.I. Act") before the Judicial Magistrate First Class, Solapur in S.C.C. No.919 of 2007. The learned trial Judge acquitted the Applicant for commission of offence punishable under Section 138 of the N.I. Act. This order was challenged by the original Complainant i.e., the Respondent No.1 herein, before the Court of

Sessions vide Criminal Appeal No.28 of 2012. The learned Sessions Judge, Solapur vide his order dated 11th October 2014 allowed that Appeal and reversed the order of acquittal. The Applicant was sentenced to suffer simple imprisonment for six months and to pay compensation of Rs. 1,25,000/-.

2. Heard Mr. Samarth Moray learned Counsel for the Applicant and Mr. Shrishail Sakhare learned Counsel for the Respondent No.1.

3. Learned Counsel for the Applicant states the Appeal against acquittal in a private complaint was not maintainable before the Court of Sessions. Section 378 (4) of Cr.P.C. provides that, Appeal against the order of acquittal in a case, arising out of a private complaint lies before the High Court. Therefore, the order of conviction and sentence recorded by the Sessions Judge, Solapur is without jurisdiction and, therefore, the impugned order is required to be set aside.

4. Learned Counsel for the Respondent No.1 fairly accepted the legal submissions. However, he submitted that liberty be

granted to the Respondent No.1 to file proper Application for leave to Appeal and also to file Appeal Memo against acquittal and the original order of the learned Magistrate.

5. The request is reasonable. In case the question of delay is raised he can point out that he pursued his remedy before a wrong forum. In this view of the matter, following order is passed:

O R D E R

- i) The order dated 11th October 2014 passed by the learned Sessions Judge, Solapur in Criminal Appeal No.28 of 2012, is set aside.
- ii) The Respondent No.1 is at liberty to prefer proper proceedings under Section 378(4) of Cr.P.C. with accompanying Application for condonation of delay.
- iii) With these observations, the Revision Application is allowed and is disposed of as such.

(SARANG V. KOTWAL, J.)