

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

CRIMINAL REVISION APPLICATION NO. 588 OF 2018

Mr. Madhukar Ganpat Patil	...	Applicant
Versus		
Warna Sahakari Bank Ltd. & Anr.	...	Respondents

Mr. Paras Yadav for the Applicant.
Mr. Freddy Bhadhe i/by Vishwajeet S. Kapse for Respondent No.1.
Mr. M. G. Patil, APP for Respondent No.2-State.

CORAM: R. N. LADDHA, J.

DATE : 21 DECEMBER 2023

P.C. :-

1. Heard Mr Paras Yadav, the learned Counsel for the applicant/original accused; Mr Freddy Bhadhe, the learned counsel for respondent No.1; and Mr M. G. Patil, learned Additional Public Prosecutor for respondent No.2-State.

2. This revision application is filed against the judgment and order dated 27 September 2018 passed by the learned Additional Sessions Judge, Kolhapur, in Criminal Appeal No.167 of 2007 and the judgment and order dated 2 November 2007 passed by the learned Judicial Magistrate First Class, Panhala, Kolhapur, in Summary Criminal Case No.142 of 2005, whereby the applicant/accused was convicted under Section 138 of the Negotiable Instruments Act, 1881 (for short 'NI Act').

Note: This order is corrected as per speaking to the minutes order dated 12 January 2024.

3. The learned Counsel for the contesting parties jointly submitted that during the pendency of the present revision application, the applicant/accused and respondent No.1/original Complainant have resolved their dispute amicably. The learned Counsel for respondent No.1 submitted that respondent No.1 has no objection to setting aside the concurrent judgment and order of conviction passed by both Courts below and has placed on record consent affidavit dated 13 December 2023 along with the Bank Resolution dated 7 December 2023 to show that Mr Jaydeep Patil is authorised to extend consent for withdrawal of prosecution. Mr Jaydeep Patil, the authorised signatory of respondent No.1 is present in the Court and is identified by his Counsel. When questioned, he confirmed that Bank has no objection to set aside the conviction of the applicant.

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, 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 2 November 2007 passed by the learned Judicial Magistrate, First Class, Panhala, Kolhapur in Summary Criminal Case No.142 of 2005 and the judgment and order dated 27 September 2018 passed by the learned Additional Sessions Judge, Kolhapur, in Criminal Appeal No.167 of 2007, confirming the conviction of the applicant, are set aside and the applicant/accused is acquitted subject to the payment of cost of Rs.5,000/- to the High Court Legal Services Authority, Mumbai, by the applicant/accused within a period of four weeks from the date of uploading this order.

7. The present Criminal Revision Application stands disposed of in the aforesaid terms.

BIPIN DHARMENDER
PRITHIANI

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R. N. LADDHA, J.