



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

5 CRIMINAL WRIT PETITION NO. 172 OF 2025

1. Abbee Consumable And Peripherals Shoppee Ltd
A company registered under the Companies Act,
Having its office at Shop No.1, Ground Floor,
Kumar Garima, Tadiwala Road, Pune
2. Badrinarayan s/o Bansilal Soamani
Director and Authorized Signatory,
Age 65 years, Occu: Business,
Shop No.1, Ground Floor,
Kumar Garima, Tadiwala Road, Pune

.... **PETITIONERS**

VERSUS

Virendra @ Virendrasingh Uttamsingh Pawar
Age 47 years, Occu: Business,
R/o 27, Sueksha Vyankatesh Nagar,
Jalna Road, Aurangabad

.... **RESPONDENT**

...

Mr. Jaiswal Nikhil Deepak, Advocate for the Petitioner

CORAM : Y. G. KHOBRAGADE, J.

Dated : 24th February, 2025

PER COURT :-

1. Heard Mr. Jaiswal, the learned counsel for the
Petitioners at length.
2. By the present Petition under Articles 226 and 227 of

the Constitution of India, the Petitioners take exception to the order dated 18.06.2024 passed by the learned Additional Sessions Judge, Aurangabad below Exh. 4 in Criminal Appeal No. 20 of 2024, thereby while suspending the sentence, the present petitioners/accused were directed to deposit 20% of the compensation under section 138 of the Negotiable Instruments Act within a period of one month from the date of order.

3. In the present Petition, the petitioners have put forth prayer clause (B) as under:

“(B) Impugned order and judgment dated 18.06.2024 below Exh. 4 in Criminal Appeal No.20 of 2024 to the extent of depositing 20% of compensation amount within one month from the date of order passed by the learned Additional Sessions Judge may kindly be quashed and set aside.”

4. Needless to say that, in an earlier round of litigation, the Petitioners/accused had filed Criminal Writ Petition No. 1207 of 2024 on 01.07.2024 and had put forth prayer clause (B) as under:

“(B) Impugned judgment and order dated 18.06.2024 below Exh. 4 in Criminal Appeal No.20 of 2024 to the

extent of depositing 20% of compensation amount within one month from the date of order passed by the learned Additional Sessions Judge may kindly be quashed and set aside.”

5. In Criminal Writ Petition No.1207 of 2024, on 21.10.2024, this Court passed the following order:

“On instructions, the learned counsel appearing for the Petitioner seeks leave to withdraw the petition. Accordingly, the petition is dismissed as withdrawn.”

6. Subsequently, the Petitioners have instituted Criminal Writ Petition No. 15 of 2025 on 10.12.2024 and put forth prayer clause (B) as under:

“(B) Impugned judgment and order dated 18.06.2024 below Exh. 4 in Criminal Appeal No.20 of 2024 to the extent of depositing 20% of compensation amount within one month from the date of order passed by the learned Additional Sessions Judge may kindly be quashed and set aside.”

7. In Criminal Writ Petition No. 15 of 2025, on 24.01.2025, this court passed the following order:

“1. The learned counsel for the Petitioner seeks leave to withdraw the Petition with liberty to file a fresh on the ground that wrong petition has been filed online.

2. Accordingly, the Writ Petition is disposed of with liberty to file fresh Petition, if he so desires.”

8. When this Court raised a question that, whether the subsequent petition is maintainable on the same cause of action when the former Criminal Writ Petition No. 1207 of 2024 was disposed off by this Court as withdrawn on instructions in which order dated 18.06.2024 was challenged ?

9. The learned counsel appearing for the petitioners submits that, if the petitioners withdraw the first petition challenging the same order and filed a subsequent petition challenging same order which was subject matter of the former petition in that circumstances, principles of res judicata provided under section 11 of the Criminal Procedure Code is not applicable, hence, second petition is not barred on same cause of action.

10. To buttress this submission, the learned counsel appearing for the petitioner placed reliance on ***Muskan Enterprises and Others Vs. The state of Punjab and others, MANU/SC/1431/ 2024 [Criminal Appeal No.5491 arising out of SLP (Cri.) No. 8072/2024]***, the Hon'ble Supreme Court observed as under:

“14. The procedural laws governing criminal proceedings and civil proceedings in our country are quite dissimilar, though the rule of audi alteram partem and a procedure that is both fair and reasonable to both/all parties for rendering justice are at the heart of both the Cr. PC and the Code of Civil Procedure, 1908. The principle of res judicata, traceable in Section 11 of the CPC, does neither apply to criminal proceedings nor is there any provision in the Cr. PC akin to Order XXIII Rule 1(3), CPC. While Section 114 of the CPC read with Order XLVII thereof empowers the civil courts to exercise the power of review, Section 362, Cr. PC bars a review. A close reading of Sections 482, Cr. PC and 115, CPC would also reflect that the purposes sought to be achieved by exercising the high courts’ inherent powers, which the respective procedural laws save, are also at variance. Prudence and propriety in the decision-making process, thus, make it imperative for the high courts to not confuse the procedural laws governing criminal and civil proceedings.

15. The legal position as to whether a second petition under Section 482, Cr. PC would be maintainable or not is no longer res integra. We may notice a few decisions of this Court on the point.

16. In S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla 11, a decision arising out of the N.I. Act, the relevant high court had given the party the liberty to avail any remedy in law, if

available, at the time of withdrawing her petition under section 482, Cr. PC. This Court, observed that the high court would have the inherent power to decide any successive petition under section 482 and that it is not denuded of that power by the principle of res judicata.

17. That the principle of res judicata has no application in a criminal proceeding was reiterated by this Court in Devendra v. State of U.P (2009) 7 SCC 459

18. Recently, this Court in Bhisham Lal Verma v. State of U.P¹³, has again held that there is no blanket rule against filing of successive petition under section 482, Cr. PC before the high court. It was also held that if such a petition is filed, it must be seen (2007) 4 SCC 70 (2009) 7 SCC 495 2023 SCC OnLine SC 1399 whether there was any change in facts or circumstances, necessitating the filing of such petition.

19. Section 482, Cr. PC, on its own terms, saves the inherent powers of the high court to make such orders as may be necessary (i) to give effect to any order under the Cr. PC, or (ii) to prevent abuse of the process of any court, or (iii) to secure the ends of justice. Change of law can legitimately be regarded as a vital change in circumstance clothing the high court with the power, competence and jurisdiction to entertain the subsequent petition notwithstanding the fact that the earlier petition was withdrawn without obtaining any leave, subject to the satisfaction recorded by the high court that the order prayed for in the subsequent petition ought to be made, inter alia, either to prevent abuse of the process of any court or to secure the ends of justice.

20. Thus, in our considered opinion, the constricted view taken by High Court to hold that the appellants were required to obtain the leave of the Judge who had dismissed the earlier petition prior to filing the subsequent petition is clearly untenable and not warranted in law. It is noted that the appellants had applied a second time before the High Court only when the law on interpretation of Section 148, N.I. Act was laid down somewhat differently in Jamboo Bhandari (supra) and not on any other ground. It was not a review in disguise that the appellants attempted but their endeavour

was to impress the High Court to have the law, currently governing the field, to be applied in their case. In terms of the authorities referred to above, the subsequent petition was well-nigh maintainable.”

11. Reverting to the present case, it shows that, in an earlier round of litigation the petitioner had filed Cri. W. P. No. 1207 of 2024 and challenged the order dated 18.06.2024 passed by the learned Additional Sessions Judge, Aurangabad below Exh.4 in Criminal Appeal No. 20 of 2024. However, on 21.10.2024, after hearing quite some time, when this court showed disinclination, on instructions the learned counsel for the petitioners withdrew the said petition without reserving any right to file subsequent Petition. Further, the petitioners again filed Criminal Writ Petition No. 15 of 2025 but again it was withdrawn on 24.01.2025 with liberty to file a fresh because wrong petition was uploaded and filed online. It is submitted that, once the Court showed disinclination to entertain the petition and the petitioners withdraw the petition without liberty to file a fresh petition in that event, a subsequent petition challenging the same order on same cause of action which was subject of the former suit is not maintainable. Therefore, considering the law down in the cited case, principle of res judicata provided under section 11 of the Cr.P.C. is applicable to the present case because the petitioner has

not invoked Sec. 482 of Cri. P. C. Therefore, the Criminal Writ Petition is dismissed.

12. In so far as Criminal Writ Petition No. 15 of 2025 is concerned, the petitioner himself stated that it was wrongly uploaded and was withdrawn, therefore, liberty to file afresh was granted. It is submitted that, while disposing off the Criminal Writ Petition No. 15 of 2025 this Court had not gone merit of the matter. Moreover, the petitioner has not disclosed the fact of filing Cri. W. P. 1207/2024) and its withdrawal.

(Y. G. KHOBRAGADE, J.)

JPChavan