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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1958 OF 2024

Musa Sherkha Pathan,
Age:43 Years, Occ: Labour,
R/o . Kotambwadi,
Tq. and Dist. Parbhani.

... Petitioner
(Original Accused)

VERSUS

1. The State of Maharashtra,
Through Police Inspector,
Police Station, New Mondha,
Parbhani.

2. ShaikhRafiq Shaikh Chand,
Age: 35 Years, Occ.: Business,
R/O.: Kotambwadi,
Tq. and Dist. Parbhani.

.... Respondents

.....
Mr. Saeed S. Shaikh, Advocate for Applicant (Through OnLine)
Mr. G.A. Kulkarni, APP for Respondent No.1 – State
Mr. S.V. Jadhavar, Advocate for Respondent No.2

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CORAM : SMT. VIBHA KANKANWADI AND
HITEN S. VENEGAVKAR, JJ.

DATE : 08 SEPTEMBER, 2025

PER COURT :-

1. The present writ petition has been filed for setting aside the judgment and order dated 06.07.2019 passed in R.C.C. No. 829 of 2011 by the learned Judicial Magistrate, First Class, Court No.2, Parbhani, convicting the petitioner for the offences punishable under Sections

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420, 467, 468 and 471 of the Indian Penal Code. The said conviction is under challenge in Criminal Appeal No. 50 of 2019, pending before the learned Sessions Judge, Parbhani.

2. Learned advocate for the petitioner as well as learned advocate for respondent No.2 submitted that respondent No.2 had filed a private complaint before the learned Judicial Magistrate, First Class, and after recording the evidence and hearing the submissions, the learned Magistrate held the petitioner guilty of the offences punishable under Sections 420, 467, 468, and 471 of the IPC. For each of the offences, separate sentences were awarded, the maximum of which is three years. The total fine imposed is Rs.35,000/-. As regards the fine amount is concerned, the order was also passed directing that the said sum of Rs. 35,000/- be paid to the complainant as compensation under Section 357(1) of the Code of Criminal Procedure. The said conviction is under challenge, however, with the intervention of elderly persons from society, the complainant and the petitioner/accused have entered into compromise. The petitioner accepts that he has already handed over the vacant possession of the disputed plot to petitioner No.2. However, on the last occasion, a query was raised as to how this could be possible when there are allegations that, by a subsequent sale deed, the same plot was sold by the petitioner to a third party. It was then stated that

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the petitioner has cancelled the sale deed executed by him in favour of the third party, namely, Ashok Sundar Rathod. Therefore, by order dated 11.08.2025, we have directed the parties to produce the document of cancellation of Sale Deed No. 6511 of 2011. Accordingly, the petitioner has filed the cancellation deed dated 09.02.2021, executed between the petitioner and Ashok Rathod. A copy of the said document has been taken on record. This ensures that the rights of respondent No.2 are protected.

3. The learned APP strongly opposes the compromise on the ground that the fine amount has not been paid by the petitioner, and that the learned Trial Court has held that a fabricated document was prepared, which is a serious offence. It is therefore submitted that the compromise need not to be accepted for setting aside a conviction recorded on merits.

4. Though the conviction was on merits, it is still the subject matter of a criminal appeal pending before the learned Sessions Judge, Parbhani. In *Ramavtar v. State of Madhya Pradesh*, 2021 SCC OnLine SC 966, such settlement can be considered for quashing the conviction and the proceedings. Here, it is to be noted that the present case arises out of a private complaint and the right that was agitated was in a way personal to the complainant. No doubt, a second sale deed was

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executed; however, whether it amounts to creation of a false document and whether all the ingredients of the offence are attracted, is still the subject matter of the appeal. Now, legal recourse has been adopted by cancelling the second sale deed and thereby confirming the first sale deed, which was executed in favour of the complainant. Since the complainant is now getting a clear title, the complainant would be justified in giving consent for quashing the conviction and the proceedings. Therefore, we accept the same.

5. The petitioner has not produced on record the evidence to show that the fine amount was deposited by him. On perusal of the copy of the judgment and order passed by the learned Trial Judge, it is seen that there is an endorsement by the Nazir of the C.J.M. Court, Parbhani, dated 06.07.2019, stating that the fine amount has not been paid. Even then, as we are accepting the settlement and setting aside the conviction, there is no necessity for payment of fine. However, as the entire machinery has been used, we would imposed costs on the petitioner. Respondent number 2 is not praying for any compensation now. In such circumstances, costs of Rs. 35000/- is required to be imposed on the petitioner while accepting the settlement.

6. For the aforesaid reasons, we proceed to pass the following order:

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ORDER

- (i) The criminal writ petition stands allowed.
- (iii) The conviction awarded to the petitioner by the judgment and order dated 06.07.2019 in R.C.C. No. 829 of 2011, passed by the Judicial Magistrate, First Class (Court No.2), Parbhani, for offences punishable under Sections 420, 467, 468 and 471 of the IPC, stands quashed and set aside.
- (iii) The proceedings in Criminal Appeal No. 50 of 2019, pending before the learned Sessions Judge, Parbhani, stand disposed of. The petitioner stands acquitted of the offences punishable under Sections 420, 467, 468 and 471 of the IPC upon deposit of costs of Rs.35,000/- with the High Court Legal Services Sub-Committee, Bench at Aurangabad, within a period of two weeks from the date of uploading of this order. In case of failure on the part of the petitioner to deposit the said amount, the same shall be recovered from him as arrears of land revenue.

[HITEN S. VENEGAVKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE