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

Criminal Revision Application No.72 of 2024

With

Interim Application No.405 of 2024

In

Criminal Revision Application No.72 of 2024

With

Interim Application No.404 of 2024

In

Criminal Revision Application No.72 of 2024

Deepak Parsuram Dharne

Aged 70 years, Occupation:

At residing 205, Bhisma CHS, Plot No.04,

Vishal Nagar,

Marve Road, Malad West,

Mumbai 400 064

... Applicant

versus

1. Mukesh Kumar Goyal

Karta of Mukesh Kumar Goyal HUF,

Proprietor of Nand ChemImpex,

At 209, Anand, 82/84, Kazi Sayed Street,

Masjid Bunder,

Mumbai – 400 009.

2. The State of Maharashtra

... Respondents

Mr BD Chauhan, for the applicant.

Mr MV Swar, for respondent No.1.

Mr Swapnil S Pednekar, APP, for respondent No.2/ State.

Coram: R.N. Laddha, J.

Date: 31 January 2025.

P.C.:

Heard Mr BD Chauhan, the learned Counsel for the applicant/accused; Mr MV Swar, the learned Counsel for respondent No.1/complainant; and Mr Swapnil Pednekar, learned Additional Public Prosecutor for respondent No.2/State.

2. By a judgment and order dated 26 February 2021 passed by the learned Metropolitan Magistrate, 70th Court, Mazgaon, Mumbai, in C.C.No.7001310/SS/2018, the applicant/accused was convicted for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for short 'NI Act'), sentenced to suffer simple imprisonment for one month and pay a fine of Rs.1,28,931/-. The applicant challenged this judgment and order in Criminal Appeal No.171 of 2021 before the learned Additional Sessions Judge, Mumbai. By a judgment and order dated 24 November 2023, the learned Additional Sessions Judge, Mumbai, confirmed the conviction. The applicant seeks to challenge these concurrent findings in the present revision application.

3. The learned Counsel for the contesting parties jointly submit that during the pendency of the appeal proceedings, the applicant and respondent No.1 had resolved their dispute

amicably and entered into consent terms. However, due to unforeseeable circumstances, the applicant couldn't repay the amounts and the conviction stood confirmed by the appellate Court. The learned Counsel appearing for the applicant submits that the applicant has already paid Rs.31.50 lakhs to respondent No.1 through demand draft and the balance amount will be paid within a period of four weeks. The learned Counsel for respondent No.1 acknowledges the receipt of Rs.31.50 lakhs. He further submits that respondent No.1 has no objection to setting aside the applicant's conviction ordered by the learned Metropolitan Magistrate, 70th Court, Mazgaon, Mumbai and confirmed by the learned Additional Sessions Judge, Mumbai. Respondent No.1, who is present in the Court and identified by his Counsel, when questioned, states that he has no objection to setting aside the applicant's conviction. The contesting parties 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 applicant's conviction.

6. In these circumstances, the judgement and order dated 24 November 2023 passed by the learned Additional Sessions Judge, Mumbai, in Criminal Appeal No.171 of 2021, confirming the conviction of the applicant and the judgment and order dated 26 February 2021 passed by the learned Metropolitan Magistrate, 70th Court, Mazgaon, Mumbai, in CC No.7001310/SS/2018, are set aside and the applicant is acquitted, subject to the payment of cost of Rs.2000/- to the High Court Legal Services Authority, Mumbai, by the applicant within four weeks from the date of uploading this order.

7. In light of the above, the present revision application stands disposed of accordingly. As a sequel, the pending applications also stand disposed of.

(R.N. Laddha, J.)