

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

Criminal Revision Application No.73 of 2024

With

Interim Application No.406 of 2024

In

Criminal Revision Application No.73 of 2024

With

Interim Application No.407 of 2024

In

Criminal Revision Application No.73 of 2024

1. Sharayu Synthetic Processors
(Partnership Firm)
2. Atul Narayan Bhoir, 50 years
3. Narayan Janu Bhoir, aged 81 years
4. Vanita Narayan Bhoir,
aged 74 years

All are Having office at H.No.1662,
Saraswati compound,
Near Ganesh Society,
Bhiwandi: 421 302

... Applicants

versus

1. Mukesh Kumar Goyal
Karta of Mukesh Kumar Goyal HUF,
Proprietor of NandChemImpex,
At 209, Anand, 82/84, Kazi Sayed Street,
Masjid Bunder,
Mumbai – 400 009.

2. The State of Maharashtra

... Respondents

Mr BD Chauhan, for the applicants.

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 applicants/ 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.7001211/SS/2018, the applicants/accused were 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.30,29,234/-. The applicants challenged this judgment and order in Criminal Appeal No.167 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 applicants seek 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 applicants and respondent No.1 had resolved their dispute amicably and entered into consent terms. However, due to unforeseeable circumstances, the applicants couldn't repay the amounts and the conviction stood confirmed by the appellate Court. The learned Counsel appearing for the applicants submits that the applicants have 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 applicants' 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 applicants' 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 applicants' 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.167 of 2021, confirming the conviction of the applicants, and the judgment and order dated 26 February 2021 passed by the learned Metropolitan Magistrate, 70th Court, Mazgaon, Mumbai, in CC No.7001211/SS/2018, are set aside and the applicants are acquitted, subject to the payment of cost of Rs.2000/- to the High Court Legal Services Authority, Mumbai, by the applicants 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.)