

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO. 508/2007

(Gajanan S/o Digambar Koshatwar Vs. State of Maharashtra & anr.)

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Mr. V.R. Choudhari, Advocate for appellant.
 Ms. G. S. Umale, APP for respondent/State.
 Mr. V. Darne, Advocate for respondent No.2.

CORAM: M. M. NERLIKAR, J.

DATED : 25/11/2025.

Heard.

2. The learned counsel for respondent No.2 was served and Mr. V. Darne, learned counsel initially appeared for respondent No.2, however as no instructions were received from respondent No.2, he sent notice for withdrawal of the power. The aforesaid notice was also served. However, this Court requested Mr. Darne, learned counsel to assist this Court by continuing his appearance on behalf of respondent No.2. Accordingly, he assisted the Court. The present appeal is directed against the judgment and order dated 17.07.2007 passed by the Judicial Magistrate First Class, Digra in Complaint Criminal Case No.2800/2005, wherein the respondent No.2 was acquitted of the charge for the offence punishable under Section 138 of the Negotiable Instruments Act ("NI Act") on the ground of maintainability as the Partnership Firm of the appellant was not registered. The Trial Court has held in para Nos. 12 and 13 as under:-

“12 Since under the provisions of the Section 138 of the Negotiable Instrument Act, the complainant indirectly gets the relief of recovery of the cheque amount, the view that the complaint by the partner of un-registered firm is not main tenable is more acceptable. What the complainant cannot recover by civil action he cannot recover it through a criminal case, nor he should be allowed to do so.

13. Therefore, considering the admitted fact that the cheque Ex. 31 is issued in the name of the firm, which is not registered, the complainant as a partner of the said firm has not locus standi to file a complaint under Section 138 of the Negotiable Instrument Act. Therefore, I am of the considered view that the present complaint is not at all maintainable. Hence, I decide point No. 1 in the negative.”

3. The learned counsel for the appellant submits that the issue is no more res integra as the issue was referred to the Larger Bench in *Narendra S/o. Amarnathji Kalda Vs. Balbirsingh S/o. Motisingh Chawhan & anr.* (Criminal Application No. 748/2018, decided on 07.02.2020) where relying on the judgment of ***A. V. Ramanaiah Vs. Shekhara, ALD (CRI) 2009 2 801*** observed that, *“the bar contained under Section 69 of the Act of 1932 is intended to prevent an unregistered partnership firm to enforce a right arising out of a contract against a third party and that it is not intended to create any such bar for the purposes of enforcing rights arising out of statutes or for invoking the*

protection available under any other statute.” The Single Bench of this Court vide order dated 24.10.2018 had referred the matter to the Larger Bench, wherein the following issue was framed:-

“Whether prosecution of accused under Section 138 of the Negotiable Instruments Act, 1888, is hit by the bar created by sub-section (2) of Section 69 of the Indian Partnership Act, 1932?”.

The Division Bench of this Court after discussing the relevant provisions as well as interpreting various judgments including the judgment delivered by the Larger Bench of the Andhra Pradesh High Court in case of A. V. Ramanaiah (*supra*) has answered the aforesaid question in negative and held that, *“the prosecution of an accused under Section 138 of the Negotiable Instruments Act, 1881 is not hit by the bar created by sub-section (2) of Section 69 of the Indian Partnership Act, 1932.”*

4. Considering the above, as the issue is not settled, the judgment delivered by the Judicial Magistrate First Class, Digra dated 17.07.2007 deserves to be quashed and set aside. Hence the following order is passed:-

(I) Appeal is hereby allowed.

(II) The judgment and order dated 17.07.2007 passed by the Judicial Magistrate First Class, Digra in Complaint Criminal Case No.2800/2005 is hereby quashed and set aside.

(III) The Matter is remanded back to the Trial Court for fresh decision.

(IV) The decision shall be taken on the basis of merits of the matter.

5. Appeal is disposed of in above terms.

(M. M. NERLIKAR, J.)

Gohane