

Rajendra Anant Varik

v.

Govind B. Prabhugaonkar

(Criminal Appeal No. 2476 of 2025)

06 May 2025

[Vikram Nath and Sandeep Mehta,* JJ.]

Issue for Consideration

Whether the High Court was justified in reversing the judgment of the First Appellate Court acquitting the appellant-accused and setting aside his conviction u/s.138, Negotiable Instruments Act, 1881 as recorded by the trial Court.

Headnotes[†]

Negotiable Instruments Act, 1881 – s.138 – Goa Money-Lenders Act, 2001 – Applicability of – First Appellate Court allowed the appellant's appeal against conviction – It was held that as the respondent-complainant was indulged in money lending activities without acquiring a license, thus, he was acting in breach of the provisions of the Goa Act and hence, he was precluded from prosecuting the appellant under NI Act – Acquittal reversed by High Court – Interference with:

Held: High Court while reversing the acquittal of the appellant did not advert to the important issue regarding applicability of the Goa Act which provided a valid defense available to the appellant – Further, the appellant has already paid the cheque amount and the fine imposed by the trial Court – Offence compounded in exercise of powers u/Art.142 of the Constitution of India – Appellant acquitted subject to the condition stated – Constitution of India – Art.142. [Paras 8, 10]

List of Acts

Negotiable Instruments Act, 1881; Goa Money-Lenders Act, 2001; Code of Criminal Procedure, 1973; Constitution of India.

* Author

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List of Keywords

Valid defense; Money lending activities; Without acquiring license; Precluded from prosecuting; Appeal against conviction; Acquittal reversed; Offence compounded; Compensation paid; Cheque amount paid; Powers under Article 142 of the Constitution of India exercised.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2476 of 2025

From the Judgment and Order dated 07.01.2023 of the High Court of Judicature at Bombay at Goa in CRLA No. 53 of 2017

Appearances for Parties

Advs. for the Appellant:

Ivo Dcosta, Guruprasad Naik, Sahil Tagotra.

Judgment / Order of the Supreme Court

Judgment

Mehta, J.

1. Heard.
2. Leave granted.
3. The accused-appellant has approached this Court, through this appeal by special leave, assailing the judgment dated 7th January, 2023, passed by the High Court of Judicature at Bombay¹ in Criminal Appeal No. 53 of 2017 whereby the High Court quashed and set aside the judgment dated 6th February 2017, passed by the First Appellate Court being the Court of Sessions Judge, South Goa at Margao² in Criminal Case No. 29/NI/2014. The First Appellate Court had allowed the Criminal Appeal No. 72 of 2016 filed by the accused-appellant against the conviction order dated 5th August, 2016

¹ Hereinafter, being referred to as the 'High Court'.

² Hereinafter, being referred to as the 'First Appellate Court'.

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passed by the learned Judicial Magistrate First Class, Canacona³, and acquitted him while setting aside his conviction for the offence punishable under Section 138 of the Negotiable Instruments Act, 1882⁴ as recorded by the trial Court.

4. While reversing the acquittal of the accused-appellant, the High Court restored the judgment dated 5th August, 2016, passed by the trial Court in Criminal Case No. 29/NI/2014, convicting the accused-appellant for the offence punishable under Section 138 of the NI Act and directing that he shall pay compensation to the tune of Rs. 2,00,000/- to the complainant-respondent under Section 357 of Code of Criminal Procedure, 1973⁵ towards the cheque amount and further compensation to the tune of Rs. 30,000/- in the form of cost and, in default, shall undergo sentence of simple imprisonment for a period of three months. In addition, the accused-appellant was directed to undergo sentence till the rising of the Court.
5. The First Appellate Court had allowed the appeal, preferred by the accused-appellant, holding that the complainant-respondent was indulging in money lending activities, without acquiring a license and was thereby acting in breach of the provisions of the Goa Money-Lenders Act, 2001⁶ and hence, he was precluded from prosecuting the accused-appellant under NI Act.
6. No one has put in appearance on behalf of the respondent-complainant despite service of notice.
7. Learned counsel appearing for the accused-appellant, urged that the accused-appellant had returned the entire amount of loan taken from the complainant-respondent between January 2012 to July 2013. He further submitted that since the accused-appellant has returned the amount of the cheque to the complainant-respondent with interest payable thereupon, he is entitled to be acquitted by compounding the offence.
8. Upon having considered the entirety of the facts and circumstances as emerging from the record, we find that the High Court, while

3 Hereinafter, being referred to as the 'trial Court.'

4 Hereinafter, being referred to as 'NI Act'.

5 Hereinafter, being referred to as 'CrPC'.

6 Hereinafter, being referred to as the 'Goa Act'.

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reversing the acquittal of the accused-appellant, as recorded by the First Appellate Court, did not advert to the important issue regarding applicability of the Goa Act which provided a valid defense available to the accused-appellant. Thus, apparently, the judgment rendered by the High Court does not stand to scrutiny.

9. Furthermore, it is an admitted position that the cheque amount to the tune of Rs. 2,00,000/- and the compensation amount to the tune of Rs. 30,000/-, as imposed by the trial Court, has already been paid by the accused-appellant.
10. In view of the facts noted above and considering the aspect that the accused-appellant has already paid the cheque amount and the fine of Rs. 30,000/- imposed by the trial Court, we hereby, exercise our powers under Article 142 of the Constitution of India, to compound the offence and acquit the accused-appellant of the accusation under Section 138 of the NI Act subject to the condition that the entire amount of Rs.2,30,000/- deposited by the accused-appellant shall be paid to the complainant-respondent, if the same has not been paid till date.
11. Consequently, the present appeal is allowed in these terms.
12. Pending application(s), if any, shall stand disposed of.

Result of the case: Appeal allowed.

[†]Headnotes prepared by: Divya Pandey