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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 2891 OF 2026
IN
WRIT PETITION NO. 3189 OF 2014

Pico Capital Private Limited
A Limited Company registered under
The Companies Act Previously known as
M/s. Mode Export Private Limited
Through its Authorised Signatory
Mr Jamil Akhtar
Having its Registered Office at
22(1), Bombay Cotton Mills Compound,
Dattaram Ladh Path, Kalachowky,
Mumbai-400 033.

...Applicant/Ori.
Respondent No.1.

Versus

1. Vinod Kumar Chaturvedi
Aged: Occu: Managing Director of
M/s. Usher Agro Limited
Residing at 1402, La-Saren Apts.
Above HDFC Bank Limited,
J.P. Road, Andheri (West),
Mumbai-400 058.

....Respondent
No.1/Ori. Petitioner

2. M/s. Swajay Finance Private Limited
Having its address at 22, B.V. Patel,
Rani Sati Road, Near Laxmi Narayan
Temple, Malad (East),
Mumbai-400 067.
3. State of Maharashtra
Through APP

...Respondents/Ori.
Respondent Nos.2
& 3.

**Mr Mutahar Khan, with Kavisha Shah, Harshil Gandhi
and Naiana Boraste i/b India Law Alliance, for**

Applicant in IA.
Mr Yashpal Thakur, with Mukund Pandya, Dhruv Bhinde,
for Respondent No.1.

CORAM	DR. NEELA GOKHALE, J.
RESERVED ON:	22 nd SEPTEMBER 2026
	(IN CHAMBERS)
PRONOUNCED ON:	30 th SEPTEMBER 2026

JUDGMENT:-

1. By this application, the Applicant seeks recall and setting aside of the *ex-parte* Order dated 18th September 2025, passed by this Court in Criminal Writ Petition No. 3189 of 2014, by which the issue process order dated 16th September 2013, passed against Respondent No.1 herein, by the Metropolitan Magistrate, 7th Court, Dadar, Mumbai in Criminal Complaint No. 1675/SS/2013, was quashed and set aside.

2. The brief facts of the case are as follows:

3.1. The Applicant (Original Respondent No.1/ Complainant) is a private limited company incorporated and registered under the Companies Act. Respondent No.1 (Original Petitioner) is the Managing Director of Usher Agro

Limited, a company incorporated and registered under the Companies Act; Respondent No.2-M/s Swajay Finance Pvt. Ltd. (Original Respondent No.2) is also a company incorporated and registered under the Companies Act; and Respondent No.3 is the State of Maharashtra.

3.2. The Applicant filed a complaint against the Respondents herein and other Directors of Respondent No.2-Company under Sections 138 and 141 of the Negotiable Instruments Act, 1881 ('**NI Act**') before the Metropolitan Magistrate, 7th Court, Bhoiwada, Mumbai, alleging that the Respondent No.1, being the CMD of Usher Agro Limited, was the main person responsible for inducing the Applicant for making Inter Corporate Deposit of Rs.150 Lakhs in the Respondent No.1's front company i.e., Respondent No.2, by making representations to the Applicant that the Respondent No.1 would be personally liable to repay the amount so advanced by the Applicant and by also pledging the shares of Usher Agro Limited to the Applicant as a guarantee/security.

3.3. The Metropolitan Magistrate, *vide* its order dated 16th December 2013, issued process against the Respondents and other accused. The Respondent No. 1 assailed the said order before this Court by way of the aforesaid writ petition.

3.4. By order dated 18th September 2025, this Court, after noting the Applicant's absence on multiple dates of hearing and numerous adjournments sought by the parties, and after evaluating the merits of the case, quashed and set aside the issue process order passed by the Metropolitan Magistrate. It is this order which is sought to be recalled in the present application.

3. Mr Mutahar Khan, learned Counsel, appeared for the Applicant and Mr Yashpal Thakur, learned Counsel, appeared for Respondent No.1

4. Mr Khan submitted that the Applicant appeared and contested the proceedings from 2014, however, due to *bona fide* reasons, including a change in advocate and the inability of the new advocate to formally appear for want of NOC from previous advocate, there was no effective representation on

behalf of the Applicant when the matter was taken up for final hearing. The Applicant had no knowledge of the matter being circulated or listed.

5. He further submitted that the impugned Order should be recalled, as it was passed without affording the Applicant an opportunity to present his case. He also submitted that the High Court is vested with the power to recall an order passed in circumstances leading to procedural irregularity, denial of fair hearing, violation of principles of natural justice, or resulting in miscarriage of justice, and that the present case warrants exercise of such power. He relied on the decisions of the Supreme Court in *Vishal Agarwal vs State of Uttar Pradesh and Another*¹ and *Mahavir alias Avnish vs State of Madhya Pradesh*². He thus prayed that the application be allowed.

6. Mr Thakur placed on record Affidavit-in-Reply dated 22nd September 2026 on behalf of Respondent No.1. He submitted that the present recall application was filed after an

¹ (2011) 14 SCC 813

² 2026 SCC OnLine SC 1747

inordinate delay of almost 9 months without explaining the sufficient cause. He further submitted that the High Court cannot exercise its inherent power under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') in view of the express bar provided under Section 362 of the CrPC. He submitted that an order passed on merits cannot be recalled and that Section 362 of the CrPC is confined to correcting clerical and arithmetical errors. He relied on the decisions of the Supreme Court in the matters of *Sooraj Devi vs Pyare Lal and Ors.*³, *Simrikhia vs Dolley Mukherjee and Chhabi Mukharjee and Ors.*⁴, *Mohammed Zakir vs Shabana and Ors.*⁵, *Ajay Singh and Ors. vs State of Chhattisgarh and Ors.*⁶ and on the decision of the Allahabad High Court in the matter of *Shiv Poojan Upadhyay and Ors. vs State of U.P. and Ors.*⁷. He thus prayed that the application be dismissed.

7. Heard the learned counsel appearing for the respective parties and perused the record with their assistance.

³ AIR 1981 SC 736

⁴ (1990) 2 SCC 437

⁵ (2018) 15 SCC 316

⁶ (2017) 3 SCC 330

⁷ 2019 (3) ALJ 407

8. A plain reading of the Order sought to be recalled reveals that the Order is passed on the merits of the matter. This Court has considered the averments made in the Complaint of the Applicant as well as the documents on record. In doing so, the Court examined and applied the provisions of Sections 138 and 141 of the Negotiable Instruments Act, 1881, in the context of the facts of the case. Only after carefully perusing the facts and applying the relevant provisions of law, this Court passed the impugned Order.

9. This Court has also recorded the Applicant's absence on several dates. It may be that on some additional dates, both the parties, by consent, took adjournments; however, it cannot be denied that the Applicant sought adjournments on three occasions, namely 23rd February 2016; 27th June 2016; and 8th August 2016. On subsequent dates, it appears that the matter was adjourned for paucity of court time or on joint request. Fact remains, however, that the Applicant was not represented on the date on which the matter was heard and the Order

came to be passed. The case is of the year 2014. There is no infirmity in the Order, and no cogent reason is made out justifying recall of the said Order.

10. In view of the aforesaid, the interim application is dismissed.

(DR. NEELA GOKHALE, J)

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