

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

Criminal Appeal No.927 of 2006

M/s Rahul Agro Input Industries
Through Its Constituent Attorney
Shri Vyloor Pisharath Raghunathan,
having Branch Office at Panchsheel III,
F-Wing, Flat No.221, 2nd floor, Raheja
Township, Malad (E), Mumbai 400 097 ... Appellant.

Versus

1. Dr. Vikas Misal
Proprietor of M/s Sachin
Krushi Kendra

2. M/s Sachin Krushi Kendra
Proprietorship firm
Having office at At & Post
Shelgaon Ateel, Taluka

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3. State of Maharashtra ... Respondents.

Mr MD Mali a/w Ms Santosh Singh for appellant.
Mr AA Palkar, APP for State.
None for respondents No.1 and 2.

Coram : R. N. Laddha, J.

**Reserved on : 20 September 2023.
Pronounced on: 28 November 2023.**

Judgment:

The substantive prayer in this appeal is to set aside the judgment and order passed by the learned Metropolitan Magistrate, 43rd Court, Borivali, Mumbai, in C.C.No. 820/SS/

2005 dated 28.06.2006, by which the complaint filed by the appellant under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act'), was dismissed, and the respondent/accused were acquitted of the charge.

2. Respondent No.2, the original accused No.2, is a proprietary firm owned by respondent No.1, the original accused No.1. The appellant, the original complainant, is also a proprietary firm that deals in insecticides and pesticides. Respondent No.1 purchased pesticides worth Rs.1,74,317/- from the appellant firm. To pay for these pesticides, respondent no.1 issued a post-dated cheque bearing No.0098845 of 17.06.2003 for Rs.1,74,317/- drawn on the Buldhana Gramin Bank, Chikli Branch, in favour of the complainant. This cheque was dishonoured with the remark "account closed" upon presentation. Despite demand through the statutory notice, the payment was not made, and ultimately, the complaint in question was filed before the learned trial Court.

3. The learned Magistrate took cognizance of the offence and summoned the accused. On the appearance of the accused, the particulars of the offence were read over and explained to him. The plea of the accused was recorded on

30.07.2005. The accused abjured the guilt and claimed trial.

4. During the course of the trial, the learned Magistrate recorded the evidence of Mr. Raghunath Vyloor Pisharath (PW1), the constituted attorney of Mrs. Vina Gopal Rathi (proprietress of the complainant firm), who deposed that the accused had issued a cheque bearing No.0098845 dated 17.06.2003 as payment for the pesticides, which was subsequently dishonoured and returned for the reason “account closed”. A number of documents were also tendered on behalf of the complainant.

5. After concluding the recording of evidence led by the appellant, the statement of the accused under Section 313 of the Code of Criminal Procedure was recorded by the trial Court wherein the respondent claimed innocence and pleaded false implication.

6. The accused, in his defence, examined himself (DW1), wherein he stated that he had purchased the insecticides from Rahul Organic, but they were of poor quality and were rejected by the Zilla Parishad, Buldhana. He also claimed that the cheque was issued for security purposes and denied any liability to pay thereunder.

7. After reviewing the evidence and documents presented, the learned Magistrate acquitted the accused. The reason for the acquittal was that the payee or holder, in due course of the cheque, did not give a statutory notice.

8. Being aggrieved and dissatisfied with the impugned judgment and order of acquittal, the complainant has preferred this Appeal.

9. In the present matter, respondent No.1 has admitted his signature on the cheque in question. The record shows that the respondent signed the cheque as a partner of the respondent firm 'M/s Sachin Krushi Kendra'. Further, it is seen that the statutory notice was duly served on respondents, but they neither replied to the notice nor made any payment pursuant thereto. The defence has not disputed the authority of Rupesh Maheshwari, who signed the notice on behalf of the appellant firm. It is undisputed that the cheque in question was dishonoured due to the account being closed. The respondent has denied receiving the notice. However, it has been established that the notice was sent by RPAD and under the certificate of posting at the respondents' address. The summons was served on the respondents at the same address. In such circumstances, unless proven otherwise, it is presumed

that the notice was delivered to the addressee. Furthermore, the respondent admitted in his statement recorded under Section 313 CrPC that he received the notice.

10. Mr MD Mali, the learned Counsel appearing on behalf of the appellant/complainant, submitted that the statutory notice was on the letterhead of the appellant firm and signed by Rupesh Maheshwari, the authorised signatory of the proprietress of the appellant firm. The authorisation of the signatory was not disputed during the trial, and hence, the signature is as good as that of the proprietress of the appellant firm. According to the learned Counsel, if there is any serious dispute regarding the authorisation of the person who issued the statutory notice, the accused/respondents could dispute this position and establish the same during the course of the trial. However, in the trial, there was no challenge to the authorisation of Rupesh Maheshwari, who signed the statutory notice. In support of his contentions, he relied on

(i) *SIL Import, USA Vs. Exim Aides Silk Exporters, Bangalore*¹; (ii) *TRL Krosakil Refractories Ltd. Vs. SMS Asia Pvt. Ltd. and Anr.*²; and (iii) *Vardhman Steel Vs. Sai Engineering*³.

1 LAWS (SC) 1999-5-114.

2 (2022)7 SCC 612.

3 LAWS (BOM)-2019-9-109.

11. The defence of the respondent is that he had purchased the insecticides from Rahul Organic, of which Gopal Rathi was the proprietor. The cheque in question was given to the complainant as a security for the purchase of insecticides. However, the Zilla Parishad rejected the insecticides, and the respondent asked the complainant to return the cheque. However, nothing is on record even to indicate that the insecticides were purchased from Rahul Organic or that they were sub-standard.

12. The accused/respondents were acquitted only on the ground that the drawer herself had not issued the mandatory notice. The signature of the proprietress of the appellant firm on the Power of Attorney, attested by the Special Metropolitan Magistrate, is not at all challenged by the respondents. The authorisation of issuing notice went unchallenged during the course of the trial. Moreover, the statutory notice is on the letterhead of the appellant firm. The accused's defence was that he had purchased the insecticides from Rahul Organic, of which Gopal Rathi was the proprietor. However, the disputed cheque was in the name of Rahul Agro Input Industries, not Rahul Organic. Mrs Vina Rathi is the proprietress of Rahul Agro Input Industries.

Additionally, in the statement recorded under Section 313 CrPC, the accused admitted that he received the legal notice and despite the receipt of the notice, he did not pay the cheque amount. The learned trial Court should have considered and discussed all these aspects of the matter, however, it failed to address these issues.

13. In the light of the above analysis and discussion, the impugned judgment and order is set aside, and the matter is remitted to the trial Court with a direction to hear the parties and record its findings on all the issues discussed hereinabove and shall decide the matter afresh in accordance with the law, preferably within three months from the date of appearance of the parties. The parties shall appear before the trial Court on 04.12.2023.

[R. N. Laddha, J.]