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RAJESHWARI
RAMESH
PILLAI

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by RAJESHWARI
RAMESH PILLAI
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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 119 OF 2020
(Leave to file appeal)**

Pravin Dhonduram Bhoir ... Applicant

vs.

Asha Anil Kanaskar and Another ... Respondents

Mr. Manish Gaikwad a/w. Mr. Rajshekhar Kirtiwardhan and Ms. Annanya Bhosale for the Applicant.

Mr. Nimesh Mehta, for Respondent (on VC).

Mr. D. J. Haldankar, APP for Respondent-State.

CORAM : GAURI GODSE, J.

DATED : 28th NOVEMBER 2025

ORDER:

1. This application is filed under Section 378(4) of the Criminal Procedure Code, by the original complainant to seek leave to file an appeal to challenge the order passed by the learned Magistrate, acquitting respondent no.1 for the offence punishable under Section 138 of the Negotiable Instrument Act.

2. Learned counsel for the applicant relies upon the decision of the Apex Court in the case of *R.V.E Venkatachala*

Gounder vs. Arulmigu Viswesaraswami and V.P. Temple and Another¹ to support his submissions that the bank return memo was admitted in evidence and it was marked as exhibit. He relies upon paragraph 20 of the judgment. He submits that the Apex Court has held that the objection as to admissibility of the document in evidence may be classified into two classes. He relied upon the observations in paragraph 20 of the judgment which reads as under :

20. The objections as to admissibility of documents in evidence may be classified into two classes:- (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as 'an exhibit', an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken before the evidence is tendered and once the document

¹ (2003) 8 SCC 752

has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The later proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the Court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the Court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the Court for permitting a regular mode or method of proof and thereby removing the

objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove, in the later case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in superior Court.”

3. Learned counsel for the applicant therefore submits that in the present case since the bank return memo was not denied and it was exhibited in evidence, the same was sufficient proof of the dishonour of cheque for convicting the accused for the offence of Section 138 of the Negotiable Instruments Act.

4. In a similar complaint filed against husband of the present accused an application for leave to file appeal is rejected by this court by order dated 11th November 2023 in Criminal Application No. 123 of 2020. The issue regarding the presumption under Section 146 of the Negotiable Instruments

Act is considered in the said order and the cheque return memo produced in the present case without the signature and stamp of the bank is not accepted as proof of dishonour of cheque in view of Section 146 of the Negotiable Instruments Act.

5. Learned counsel for the applicant submits that while deciding the Criminal Application No. 123 of 2020 the decision of the Apex Court relied upon by him was not considered. He therefore submits that in view of the legal principles settled by the Apex Court in the present case the bank return memo at Exhibit-36 needs to be accepted as admitted in evidence for sufficient compliance under Section 146 of the Negotiable Instruments Act.

6. The decision of the Apex Court is with reference to the proof of document and the stage at which the objection regarding admissibility of a document can be raised. While dealing with the civil dispute between the parties, the legal principles settled in paragraph 20 of the judgment is regarding admissibility of the document and the stage to raise such an objection with reference to a document which itself is

inadmissible and a document that is disputed and its mode of proof.

7. In the present case, the admissibility of the bank return memo is with reference to the presumption under Section 146 of the Negotiable Instruments Act for the purpose of invoking criminal action under Section 138 of the Negotiable Instruments Act. No attempt is made by the complainant to prove the Bank memo, either by primary evidence or by secondary evidence. The accused has led evidence by examining herself and disputed and denied the allegations. Hence, the legal principles settled by the Apex Court relied upon by the learned counsel for the applicant would not be of any assistance in the facts of the present case. Due to failure on the part of the complainant to examine the bank witness for proof of return memo, the return memo marked as Exhibit-26 is not read in evidence in the present case. Hence, I do not see any reason to take a different view in the present case then the view taken in Criminal Application No. 123 of 2020.

8. Thus, considering the view taken by this court in Criminal Application No.123 of 2020, the cheque return memo, in the

present case, produced without the signature or stamp of the bank, cannot be accepted as proof of dishonour of the cheque by referring to Section 146 of the Negotiable Instruments Act. The trial court's findings of not accepting the return memo as proof of dishonour of the cheque, attracting Section 138 of the Negotiable Instruments Act, cannot be faulted.

9. Considering the available evidence on record, the trial court has also disbelieved the allegations of the complainant regarding the alleged transaction. Considering the evidence on record, the view taken by the trial court is a plausible view that could have been taken based on the evidence on record. There can be interference in an appeal against acquittal if, after reappreciation of evidence, the only conclusion that could be drawn is that the guilt of the accused is proved beyond a reasonable doubt. In the present case, there is no ground for granting leave to file an appeal against the order of acquittal.

10. The Application is rejected.

(GAURI GODSE, J.)