

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1077 OF 2022

Transworld Furtichem Pvt. Ltd. Formerly ..Appellant/
Known As Trans Agro India Pvt. Ltd., . Original
A Company incorporated under the Complainant
provisions of the Companies Act,
Having its registered office at
The Affairs, 1801, 18th Floor, Plot No.9,
Sector 17, Palm Beach Road,
Sanpada, Navi Mumbai – 400 705
Through its authorised representative,
Mr. Shezad Abdul Aziz Ladiwala

V/s.

- 1 The State Of Maharashtra
Through the office of Government Pleader,
PWD Building, High Court of Bombay
Criminal Appellate Side,
Mumbai – 400 023.
- 2 Mr. Amit Navandar,
Proprietor of M/s. Gokul Seeds,
Jadhav Mandi, Bambu Galli,
Juna Mondha, Opposite Axis Bank,
Aurangabad-431 001. Respondents

Mr. Jash Dalia, Advocate for the Appellant.
Mr. Yogesh M. Nakhwa, APP for Respondent No.1-State.
Mr. Yogesh Pallad, Advocate for Respondent No.2.

CORAM : R.M. JOSHI, J.

DATE : 19th DECEMBER 2025

Oral Judgment:-

1. This appeal, filed under Section 378(5) of the Code of Criminal Procedure, 1908, takes exception to the judgment and order dated 6th November 2019 passed in SCC No. 2781 of 2017 for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, thereby acquitting the accused.

2. It is the case of the complainant before the Magistrate that respondent No. 2/Accused approached Trans Agro India Private Limited for distributorship of seeds and pesticides. A dealership proposal form with a security cheque was obtained. Respondent No. 2 is said to have raised a purchase order via email with Trans Agro on 11th August 2016. Accordingly, Trans Agro supplied the ordered goods and raised an invoice. Thereafter, on 23rd August 2016, another purchase order was raised by Respondent No. 2 with Trans Agro, and goods were supplied on 29th August 2016. It is further the case of the complainant that Trans Agro filed a company scheme petition before the National Company Law Tribunal for amalgamation into the appellant company. As per the amalgamation scheme, the appointed date for the purposes of the Income Tax Act, 1961 was 1st April 2015, whereas the effective date was 19th June

2017, being the date on which the order of the appropriate authority under Sections 391 to 395 of the Companies Act came to be filed with the Registrar of Companies. Thus, with effect from the appointed date up to and including the effective date, the transferor company, i.e. Trans Agro, undertook to preserve and carry on its business with reasonable diligence and business prudence.

3. It is the case of the complainant that the amalgamation order came to be passed by the National Company Law Tribunal (NCLT) on 27th April 2017, whereas the impugned cheque issued by respondent No. 2 in favour of Trans Agro was also dated 27th April 2017, and it was towards discharge of a legally enforceable debt. The said cheque came to be deposited on 4th May 2017, and on dishonour of the said cheque for the reason of insufficient funds, a statutory notice under Section 138 of the Negotiable Instruments Act came to be issued on 16th May 2017 on behalf of Trans Agro. Since there was non-payment of the requisite amount within the stipulated time, a complaint came to be filed before the Court on 1st July 2017. The complainant led evidence before the Trial Court, and by the impugned judgment and order dated 6th November 2019, the Trial Court dismissed the complaint. Hence, this appeal.

4. Learned counsel for the complainant/appellant herein submits that, in view of the presumption under Sections 118 and 139 of the

Negotiable Instruments Act, the Trial Court ought to have held that the cheque in question issued was in respect of discharge of a legally enforceable debt. It is his further contention that the said cheque was issued after filling in all particulars, including the amount of the cheque. It is his submission that the defence taken by the accused regarding issuance of the cheque by way of security is not tenable, as the cheques issued towards security were never presented for realization. He further argues that all requisite compliances for filing a valid complaint under Section 138 of the Negotiable Instruments Act were fulfilled by the complainant. It is submitted that the accused failed to reply to the statutory notice issued on behalf of the complainant. It is further submitted that the Trial Court committed an error in dismissing the complaint on incorrect appreciation of law and erred in holding that before presenting the cheque for encashment, no notice was issued to the accused. It is also submitted that the Trial Court committed a serious error in holding that there was no notice of amalgamation to the accused. To support this submission, reliance was placed on the notification issued by the Ministry of Corporate Affairs dated 14th December 2016. It is submitted that under Rule 6, notice of the meeting is required to be issued to creditors or members. According to him, in respect of other persons, notice under Rule 7 by way of

advertisement is sufficient. Finally, it was argued that the Trial Court erred in not considering the fact that the complainant placed on record the advertisement published in the newspaper, and therefore there was due compliance of Rule 7. Thus, it is submitted, relying upon the following judgments, that the complaint ought to have been allowed and the impugned order cannot be sustained;

1. Rohitbhai Jivanlal Patel versus State of Gujarat and anr. (2019) 18 SCC 106;
2. Associated Cement Co. Ltd. Versus Keshvanand AIR 1998 SC 596;
3. M.M.T.C. Ltd. And ors versus Medchi Chemicals & Pharma (P) Ltd. And ors. AIR 2002 SC 182;
4. MSR Leathers versus S. Palaniappan and ors. (2013) 1 SCC 177.
5. Learned counsel for the original accused supported the impugned judgment and order by contending that there is limited scope for causing interference in an order of acquittal. It is argued that unless the findings recorded by the Trial Court are perverse, the same should not be interfered with by the Appellate Court. It is argued that the witness of the complainant accepted that the complainant had given notices to its debtors and creditors regarding the amalgamation of petition; however, no such notice was placed on record. It is further submitted that mere production of the

advertisement in the newspaper is not sufficient to hold that such notice was published, and it was incumbent upon the complainant to prove the same. In the absence of any proof of such notice, it cannot be said that the findings recorded by the Trial Court are perverse.

6. No doubt, Sections 118 and 139 of the Negotiable Instruments Act provide for a presumption in favour of the negotiable instrument that the same has been issued in discharge of a legally enforceable debt. Apart from this, the complainant was in a position to place before the Trial Court various documents indicating purchase orders of the respondent-accused, as well as the act of issuance of the cheque in question. There is further no dispute about the fact that the necessary requirements for the purpose of filing a valid complaint were fulfilled. Now the question arises as to whether the order dismissing the complaint, based on the findings recorded by the Trial Court, is perverse or is a possible finding. Needless to say, in the case of a judgment of acquittal, the Appellate Court is expected to consider whether the Trial Court has failed to take cognizance of material evidence on record, and whether consideration of such material would have changed the outcome of the proceedings. It is a settled position of law that ordinarily a judgment of acquittal should not be interfered with

unless perversity is shown or the judgment in question has resulted in miscarriage of justice.

7. The learned Trial Court, in paragraph 15 of the impugned judgment, held that the witness of the complainant stated that notices were given to the debtors and creditors regarding the amalgamation petition. The relevant rules framed by the competent government indicate that, as per Rule 7, an advertisement is required to be issued before amalgamation for giving notice. Thus, it cannot be said that the observations of the Trial Court regarding the requirement of issuance of notice under Rule 7 are perverse in any manner. Now, it is required to be seen whether the complainant has proved the said contention of issuance of notice under Rule 7. Admittedly, though production was permitted by the Trial Court with regard to the alleged newspaper publication, however, admittedly the said newspaper and the publication of the advertisement therein has not been proved by the complainant by leading evidence. The consequence of not proving the said advertisement is that there is no evidence to indicate that any such advertisement was issued. The findings recorded by the Trial Court are therefore in consonance with the evidence on record, and consequently, it cannot be held that the impugned judgment is contrary to the provisions of law or perverse in any manner.

8. Needless to emphasize that the burden is always upon the complainant to prove the charge or the guilt of the accused beyond reasonable doubt in a criminal trial. The issues raised by the accused are germane in nature and go to the root of the maintainability of the complaint itself. Having regard to the aforesaid position, this Court finds no substance in the challenge to the impugned judgment and order passed by the Trial Court acquitting the accused of the charges. In such circumstances, the appeal deserves to be dismissed and accordingly stands dismissed.

(R.M. JOSHI, J.)