

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

915. CRI.APPLN/1604/2014

BABURAO RAWAN PATIL
V/S
SAW.MANGALBAI SURESH PATIL

Mr. C.R. Deshpande, Advocate for applicant.

Mr. A.G. Magre, Advocate for respondent.

CORAM : T.V. NALAWADE, J.

DATED : 24th July, 2015.

ORDER :

1. The application is filed for leave to file appeal against the judgment and order delivered by J.M.F.C., Nandurbar (Evening Court) in S.T.C. No. 943/2000. The respondent is acquitted of the offence punishable under section 138 of Negotiable Instruments Act.

2. The accused is acquitted mainly following grounds.

(i) The J.M.F.C. has no territorial jurisdiction over the matter, cause of action.

(ii) No bank officer was examined to prove that the cheque was drawn on the account of accused.

(iii) No convincing evidence was given to prove that the cheque was issued against the existing liability.

3. It appears that the cheque was presented in bank, where the complainant had account and there, it was informed to him that the cheque bounced and it was referred to drawer. Thus cheque bounced for the reason that there was no sufficient amount in the account of the accused and there was no question of giving further proof that the cheque was drawn by the accused. It was necessary for the accused to step in to witness box and give evidence in that regard.

4. In view of the recent Ordinance of 2015 issued by the Central Government for amending the provisions of N.I. Act, the complaint can be filed at the place where the cheque was bounced though this bank may be the bank of the payee.

5. The learned J.M.F.C. has not considered the provision of section 20 of N.I. Act and has considered the circumstance of different ink appearing on cheque on two places. It can be said that the J.M.F.C. was much influenced by the contention with regard to the territorial jurisdiction over the matter. In view of the aforesaid circumstances, this Court holds that there is arguable case to the complainant.

6. So, application is allowed. Leave is granted. Appeal is

admitted. Notice after admission is waived by learned counsel
Shri. A.G. Magre for respondent.

[T.V. NALAWADE, J.]

SSC/