

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 316 OF 2002

Bhagirath S/o Janardhan Rode,
 Age 32 years, Occu.: Service,
 R/o. Jai Vishwa Bharati Colony,
 Aurangabad, in the capacity of
 Manager of Partnership Firm,
 S.J.P., Sales Corporation,
 Gomtesh Market, Aurangabad,
 and also G.P. of their partners

1. Ms. Smita W/o Premsukh Totala,
 Age 30 years, Occu.: Business,
 r/o. Govind Nagar, Aurangabad.
2. Pankaj S/o Jawaharlal Totala,
 Age 29 years, Occu.: Business,
 r/o. Andheri (E), Bombay-93

.. Appellants
 (Ori. Complainants)

VERSUS

1. M/s. Depa Films,
 F-89, MIDC Area,
 Waluj Through its
 Partner Shantanu Deshpande.
2. Shantanu Deshpande,
 Age : Major, Occu.: Business,
 Partner of M/s. Depa Films,
 R/o. F-89, MIDC, Waluj.

(Ori. Accused)

3. The State of Maharashtra

.. Respondents

Mr. V.D. Sapkal, Advocate for the appellants
 Mr. M.G. Deokate, Advocate with Mr. Deepak Padwale, advocate
 for the respondent no. 1 and 2
 Mr. V.P. Kadam, A.P.P. for the respondent/State

CORAM : M.T. JOSHI, J.
DATE : 09/04/2015

ORAL JUDGMENT :

1. Heard both sides.
2. Aggrieved by the decision of the VIII Judicial Magistrate First Class, Aurangabad acquitting the present respondent no. 2 from the offence punishable under section 138 of the Negotiable Instruments Act, the present appeal is preferred by the original complainant.
3. According to the complainant, the present respondent no. 2 had issued three cheques at Exhibit 39 to 41 for the amount due against the respondent no.2. The respondent no.2 however gave instructions to his banker for stoppage of the payment and, therefore, upon presentation of those cheques, those were returned by the said banker. According to the complainant, complainant is a partnership firm consisting of complainant nos.1 and 2. The firm has executed special power of attorney to the complainant no.1-Bhagirath, who is the Manager. The respondent no.2 used to purchase masterbatches from the complainant as well as one M/s. S.C.J. Plastics Ltd. of which the complainant was appointed as the Agent. Towards the due amount, the

cheques were issued, however, as those cheques were dishonoured for the reasons given supra, the statutory notice was issued and, thereafter, the complaint came to be filed. According to him in the reply notice, the respondent no.2/accused has denied the liability and even the issuance of cheques.

4. It is the case of the respondent no.2 that in fact, blank cheques were issued without putting the dates, as security for the payment of the amount that may stand due on a fixed date. It was agreed between the parties that as and when the accounts were settled, the cheques would be returned but the same were not returned. The cheque book was utilized long back in the year 1989 and, therefore, there was no reason to issue the cheque on the days as are finding in the said cheques i.e. of the year 2000.

5. Before the learned Judicial Magistrate First Class, in all two witnesses were examined. During the trial, the extract of accounts was produced. Though, it is the complainant's case that upon failure to pay the amount within 30 days, it was agreed that interest at the rate of 21% p.a. would be charged, the complainant –

Bhagirath in his cross-examination admitted that in the statement of accounts, no interest is charged. Further, there is an admission that entry of Rs.26,765/- vide invoice no. 4596 is not entered in the account at Exhibit 38. Similar is the case regarding the other entries dated 8/10/1999 and one another amount of Rs.26,765/-. Difference was also found in respect of the cheque numbers as found in the computerized extract and in the circumstances, the learned Judicial Magistrate First Class came to the conclusion that it cannot be said that the cheques were issued towards the legally enforceable liability.

6. Upon hearing both sides, in my view, as the extract of accounts and the figures in the cheques did not tally and further the respondent has produced before the Court the counterfoil of the cheques, which would show that the cheques in ordinary course of business were issued long back and not of the year 2000, in my view, a reasonable and probable view has been taken by the learned Judicial Magistrate First Class. In the circumstances, the following order:-

7. The appeal is hereby dismissed without any order as to costs.

[M.T. JOSHI]
JUDGE

arp/