

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.457 OF 2002

Maharashtra State Seeds Corporation
Ltd., H.O. Akola, Branch New Mondha,
Nanded-2, Through its Dist.Managar,
Dilip s/o. Kishore Shahane,
Age 44 years, occ.Service ..Appellant

Versus

Subhash s/o. Vithalrao Patil
(Hanuman Hippargekar)
Prop. M/s. Deepak Krushi Seva
Kendra, Mondha, Degloor,
Dist.Nanded ..Respondent

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Ms.Anjali Bajpai Dube, advocate for appellant

Mr.B.S.Kudale, advocate for respondent appointed
as *amicus - curiae*

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CORAM : M.T. JOSHI, J.

DATE : JUNE 11, 2015

ORAL JUDGMENT :

Heard both sides. Perused record.

2] The complaint filed by present appellant for
the offence punishable under Section 138 of

Negotiable Instruments Act was dismissed by learned Chief Judicial Magistrate and present respondent was acquitted. Hence, present appeal.

3] The case of the appellant, in short, is as under :-

. The respondent had purchased seeds from the appellant for a consideration of Rs.1,50,000/-. He had made part payment, however, still an amount of Rs.32,069/- was due. In the circumstances, towards discharge of said liability, the cheque in question dated 8th June, 1998 was issued. Said cheque was presented to the bank, however, it was dishonoured. Thereafter, after issuing the notice and due to non-receipt of the amount under the cheque, the complaint came to be filed within limitation.

4] The defence of present respondent was that in

fact, as security, a blank cheque was accepted by the appellant/complainant and further, there was no service of notice upon him.

5] Learned Chief Judicial Magistrate did not agree with the contention that the cheque was passed merely as a security by inferring that in view of the presumption under Section 118 of the the Negotiable Instruments Act, it can be presumed that the cheque was drawn for consideration. Learned Chief Judicial Magistrate, however, did not agree with the contention that the notice was served upon the respondent and therefore, acquitted the respondent.

6] It is seen from the endorsement over the envelope of the registered post that the notice was sent to the present respondent, however, he was not present at his residential address and therefore, the envelope was returned back.

7] Upon perusal of the impugned judgment and after hearing the parties, no fault can be found with the reasoning of the learned Chief Judicial Magistrate as the same are based on documentary evidence. In my view, a reasonable and proper view has been taken by learned Chief Judicial Magistrate.

8] In the result, the following order :-

9] The appeal is dismissed without any order as to costs.

10] Since Mr.Kudale was appointed on behalf of the respondent as an *amicus curiae* by this Court, the High Court Legal Services Sub-committee shall pay fees of Rs.5,000/- (Rs.Five Thousand) to him.

[M.T. JOSHI, J.]