

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.72 OF 2004

Gyanchand s/o. Tolaram Hemnani,
Age 33 years, Occ. Business,
r/o. Plot No.288, Sindhi Colony,
Jalgaon, Tq. and Dist. Jalgaon ..Appellant

Versus

1] Saccharam s/o. Sadoramal Wadhwani,
Age 40 years, Occ. Business,
r/o. Shankar Fruits, Bhikchand
Jain Market, First Floor,
Jalgaon

2] The State of Maharashtra ..Respondents

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None present for appellant

None present for respondent no.1

Mr.P.N.Kutti, APP for respondent no.2 – State

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CORAM : M.T. JOSHI, J.

DATE : NOVEMBER 27, 2015

ORAL JUDGMENT :

None present for the parties except learned
A.P.P. for respondent no.2 – State. Previous
orders would also show that nobody had appeared

for the parties. In the circumstances, as a last chance, the matter was adjourned to this date.

2] Perused the record. Aggrieved by acquittal of respondent no.1/accused from the offence punishable under Section 138 of the Negotiable Instruments Act in S.C.C. No.583 of 2001 by learned Chief Judicial Magistrate, Jalgaon, present appeal is preferred by original complainant.

3] The complainant's case, in short, is as under :-

. That, respondent no.1/accused had obtained a handloan of Rs.1,50,000/- from the appellant/complainant. In consideration of repayment of the handloan, respondent no.1 issued the cheque in question for an amount of Rs.50,000/- on 2nd December, 2000 towards part payment. When the

cheque was presented on due date to the bank, it was dishonored on account of insufficient funds. Therefore, a legal notice was issued by the appellant to respondent no.1. Thereafter, as no repayment of the amount was made, the complaint was filed.

4] The defence of the respondent no.1/accused was of total denial.

5] During cross-examination of the appellant, it was suggested that merely a signed cheque was received by him. It was also suggested that there was no service of notice and the envelope returned to the appellant/complainant bears endorsement that said notice was not claimed. It was also suggested that the notice was sent on incorrect address.

6] The appellant/complainant in support of his case, has examined himself and placed on record the cheque in question, memorandum of bank and postal envelope along with the office copy of the notice.

7] Learned Chief Judicial Magistrate held that though, admittedly, both the parties are businessmen and know each other, there is no contemporaneous document that the appellant/complainant had given any handloan of Rs.1,50,000/- to the respondent no.1/accused and towards the part of remaining amount, the cheque in question of Rs.50,000/- was issued. Further, though the signature below the cheque appears to be that of respondent no.1/accused, rest of the writing was filled in by the complainant as per his own admission in the cross-examination. It was, further, held that the service of notice is not proved and therefore, respondent no.1 was

acquitted.

8] Upon perusal of the record, in my view, though, the reasons forwarded by learned Chief Judicial Magistrate that there was no proper service of the notice, cannot be accepted, taking into consideration the material appreciated by learned Chief Judicial Magistrate, in my view, the presumption that has arisen about passing of the cheque, has been successfully rebutted in the present case.

9] In the circumstances, the following order:-

. The appeal is hereby dismissed.

[M.T. JOSHI, J.]

kbp