

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.: 237 OF 2003

Abdul Quayyum Ab. Jalil,
Aged 37 years, Occu. Business,
R/o. Vishnu Nagar, Nanded.

... **APPELLANT**

VERSUS

Abdul Nayeem S/o. Abdul Jalil,
Aged 42 years, Occu.: Business,
R/o Ashoka Hotel, Nanded.

... **RESPONDENT.**

Mr. Gopal D. Kale, Advocate for the Appellant.
Mr. Nikhil Tekalr, Advocate h/f Mr. P. V. Mandlik, Senior counsel
for Respondent.

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**CORAM:-
DATED:-**

**T. V. NALAWADE, J.
5th AUGUST, 2015.**

ORAL JUDGMENT:

1. The appeal is filed against judgment and order of S.C.C. No.4053 of 2000 which was pending in the Court of learned Chief Judicial Magistrate, Nanded. In a case filed by the Appellant for offence punishable under section 138 of Negotiable Instruments Act, the Respondent is acquitted by the trial Court. Both the sides are heard.

2. It is the case of the Appellant that he had given hand loan of Rs.10,800/- to Respondent who is real brother of the complainant and for returning the amount, respondent gave him cheque dated 1st June, 2000. It is contended that this cheque bounced and after following the necessary procedure the complaint was filed. It is contended that the respondent failed to pay the cheque amount even after sending of the statutory notice.

3. Before the trial Court, complainant examined himself and the relevant record was produced. Accused also produced some record and he took the defence that there was no existing liability.

4. The learned Chief Judicial Magistrate has held that the cheque was not given as against existing enforceable liability and there is a probability that the cheque was given under a settlement which had taken place between the complainant and the accused but parties did not act as per the settlement.

5. This Court has gone through the evidence of the complainant and particularly the admissions given by the complainant during cross examination. He has admitted that a civil suit is pending between him and the accused in respect of one restaurant run under name New Best Restaurant at Anandnagar, Nanded and also in respect of one Pan Stall situated adjacent to this restaurant. Suggestions were given to him that in respect of said dispute there was a talk and settlement had taken place and the settlement was written down. This suggestion is however denied by the complainant.

6. As only aforesaid point is involved, it will be sufficient if the material only on the aforesaid point is discussed. The record of the trial Court shows that copy of plaint of R.C.S. No. 302 of 2000 is produced and it shows that the suit was filed on 12th June, 2000. In the suit filed by the complainant it is contended by him that the aforesaid hotel belongs to him and the defendant has no concerned whatsoever with the hotel but the defendant is creating obstruction. In the written statement the accused contended that it was a partnership business and he had

invested amount in the said business. He contended that settlement had taken place in the presence of some respectable persons on 19th May, 2000 and the settlement was reduced to writing as family settlement. He contended that the plaintiff, complainant had agreed to relinquish the rights but he turned his back and he is not acting as per the agreement. Though the relevant record like the so called settlement is not proved, the documents and the case of the accused show that there was a dispute and the settlement had taken place in the month of May, 2000. The cheque is dated 1st June, 2000. There is a correspondence made with the authority under the Shops and Establishments Act and it shows that E-form was filed by complainant with the authority for changing the name of the owner on 12th June, 2000. It appears that after giving of the cheque such correspondence was made but the plaintiff, complainant turned his back and he filed suit also on the same day. In view of these circumstances, the learned Chief Judicial Magistrate has held that there is a possibility that there was some settlement and under the settlement the cheque was given and as the settlement did not materialise there was no existing enforceable liability.

In view of the aforesaid circumstance, such possibility is created. This Court holds that learned Presiding Officer of the trial Court has not committed any error in acquitting the accused. In view of these circumstance, no need is felt to interfere in the decision of the trial Court.

7. In the result, appeal stands dismissed.

[T. V. NALAWADE, J.]

Dated:05/08/2015.
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