

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 488 OF 2003

Matadin S/o Khairitimal Joshi
 Age 65 years, Occu.: Business,
 R/o Joshi Medicals, Gandhi Chowk,
 Bhusawal, District Jalgaon .. Appellant
 (Orig. Complainant)

Vs.

1] Anil S/o Dwarkadas Agrawal,
 Age 28 years, Occu.: Business,
 R/o Anil Motor Parts,
 Behind State Bank, Municipal Park,
 Bhusawal, District Jalgaon
 .. *Orig. Accused*

2] The State of Maharashtra .. Respondents

None present for the appellant
 Mr. D.L. Agrawal, Advocate for respondent no.1
 Mrs. B.B. Gunjal, A.P.P. for the respondent/State

CORAM : M.T. JOSHI, J.

DATE : 09/06/2015

ORAL ORDER :

. None appears for the appellant. Nobody has appeared since long in the matter for the appellant.

2. Heard learned A.P.P. and Mr. Agrawal for respondent no.1. Perused the record.

3. Aggrieved by the acquittal of the respondent

no.1 - Anil S/o Dwarkadas Agrawal from the offence punishable under section 138 of the Negotiable Instruments Act by the concerned Judicial Magistrate First Class, the present appeal is preferred by the appellant.

4. The appellant's case in short was that he had given a hand-loan of Rs.1,00,000/- to the respondent no.1 on 18/4/1993. Against the same, the cheque in question at Exhibit 32 was issued by respondent no.1 for satisfying the debt. However, on the due date, the same was returned by the concerned banker. The same was dis-honoured as the respondent no.1 had intimated his banker to stop the payment. Accordingly, necessary statutory notice was issued and since despite service of the same, no arrangement for payment was made, complaint came to be filed within limitation.

5. Present respondent no.1 denied all these contentions. His defence was that in-fact, he was ready to purchase the car of the appellant-complainant for the price of Rs.1,25,000/- and for that purpose the cheque was issued, however, the Mechanic lateron told that the car was not worth Rs.1,25,000/-. Therefore, the

transaction was not materialized. Cheque, however, was not returned by the complainant and, therefore, instructions were issued to the banker for stopping the payment.

6. Besides the oral evidence from the side of the complainant, certified copy of the judgment at Exhibit 56 in Regular Civil Suit no.322 of 1993 was pressed into service by the present respondent no.1. The appellant-complainant has denied that he has even any motor car during the relevant period which could be sold. The certified copy of the said judgment however would show that the complainant has car garage in which he used to put his cars. In these circumstances, the learned Judicial Magistrate First Class observed that the presumption regarding the transaction as a hand-loan is sufficiently rebutted.

7. Upon hearing the learned A.P.P. as well as Mr. Agrawal, learned counsel for respondent no.1 and after going through the record, in my view, the learned Judicial Magistrate has taken a reasonable and probable view. The complainant made a bold statement that he did not have even a motor car and thus tried to wash off his

hands. This defence was clearly falsified by the certified copy of the judgment in which the complainant himself was the plaintiff. In that view of the matter, the following order:-

8. The Criminal Appeal is hereby dismissed without any order as to costs.

[M.T. JOSHI]
JUDGE

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