

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 613 OF 2003

Vijay s/o. Sheetal Jakkal,
Age 32 years, Occu. Business,
R/o. Chelipura, Aurangabad
Partner of Chandraraj Books
Manufacturing registered firm
K-86, Waluj Industrial Area,
MIDC, Aurangabad.

**....Appellant.
(Ori. Complainant.)**

Versus

1. Mr. Sudhakar Sakhamam Swami,
Age 45 years, Occu. Business,
R/o. Balaji Market, N-5,
CIDCO, Aurangabad.

....(Ori. Accused)

2. The State of Maharashtra

....Respondents.

Mr. B.N. Patil, Advocate for appellant.

Mr. K.D. Pande, Advocate for respondent No. 1.

Mr. P.N. Mule, APP for State/respondent No. 2.

AND

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Age 32 years, Occu. Business,
R/o. Chelipura, Aurangabad
Partner of Chandraraj Books
Manufacturing registered firm
K-86, Waluj Industrial Area,
MIDC, Aurangabad.

**....Appellant.
(Ori. Complainant.)**

Versus

1. Sau. Meenakshi w/o. Bhaskar Swami,
Age 35 years, Occu. Business and Household,
R/o. Balaji Market, N-5,
CIDCO, Aurangabad.(Ori. Accused)
2. The State of MaharashtraRespondents.

Mr. B.N. Patil, Advocate for appellant.

Mr. K.D. Pande, Advocate for respondent No. 1.

Mr. P.N. Mule, APP for State/respondent No. 2.

CORAM : T.V. NALAWADE, J.
DATED : 14th August, 2015.

COMMON JUDGMENT :

1. The first appeal is filed against judgment and order of SCC No. 131/1999 which was pending in the Court of Chief Judicial Magistrate, Aurangabad and the second appeal is filed against the judgment and order of SCC No. 132/1999 which was pending in the same Court. Those were the cases filed on private complaints for offences punishable under section 138 of Negotiable Instruments Act. In both the cases, the trial Court has acquitted the respondents. Both the sides are heard.

2. In both the cases, acquittal is given by the learned Chief Judicial Magistrate mainly on the ground that complainant failed to prove that the partnership which was running business

in the name and style as 'Chandraraj Books Manufacturing Firm' was registered and Vijay Jakkal was partner of this firm. One more circumstance like some scratching on cheque is discussed in the first case. It is clearly mentioned in the last paragraph of reasoning in both the cases that the acquittal is given for aforesaid reason.

3. The submissions and the record show that the point that partnership firm was not registered, was raised by the accused even before starting of recording of evidence and the cognizance of the matter itself was challenged. The revisions were filed, but the revisions were dismissed.

4. This Court has perused the original record of the matters and it shows that copy of registration certificate of this partnership firm came to be produced and certified copy of document of partnership firm, which was sent for registration, is also produced. The learned counsel for complainant drew the attention of this Court to the provisions of sections 67 and 68 of the Partnership Act in which it is made clear that the certified copy issued by the Registrar of Partnership Firms can be directly admitted in the evidence. Further, the circumstance that the same point was raised in the past also, but the accused had

failed to substantiate his defence, is not considered by C.J.M. As there was such record, the record could have been considered during the trial of the case itself also. The learned counsel for the accused took this Court through the provisions of section 69 of the Partnership Act and submitted that in view of the wording of this section, the complainant is required to show that the partnership was registered and the person, partner, who had signed the complaint was shown as partner in the said document. There cannot be dispute over this proposition as the law is clear on that point. On the basis of record available, it can be said that there was such record before C.J.M., but the said record was not even seen and so, that record is not discussed in the judgments by the trial Court. As the matter is not decided on merits, this Court holds that the judgments and orders delivered in aforesaid both the cases need to be set aside and the matters need to be sent back to the trial Court for giving decision on merits of the matter. The learned counsel for the accused placed reliance on the case reported as **2000 CRI.L.J. 2386 [Mr. Amit Desai and Anr. Vs. M/s. Shinde Enterprises and Anr.]**.

5. In the result, both the appeals are allowed. The judgments and orders delivered in aforesaid cases by the learned C.J.M. are hereby set aside and the matters are

remanded back to the same Court for fresh trial. The parties are to appear before the same Court on 23.9.2015. Record and proceeding is to be sent back immediately to the trial Court.

[T.V. NALAWADE, J.]

ssc/