

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

CRIMINAL APPEAL NO. 666 OF 2003

Shripad s/o Venkatrao Auti

Age : 35 Yrs., Occ. Business,

R/o : Deshpande Galli,

Parali Vajjnath, Dist. Beed.

.... APPELLANT/

[ORI. COMPLAINANT]

V E R S U S

1. Ganpat s/o Vajjnath Kumbhar

Age : 30 Yrs., Occ. Business,

R/o : Ukhalwes, Parali Vajjnath,

Dist. Beed.

.... RESPONDENT/

[ORI. ACCUSED]

2. The State of Maharashtra

.... RESPONDENTS

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Mr. S.D.Joshi, Advocate for Appellant.

Mr. M.B.Sandanshiv, Advocate for R.No.1.

Mrs. R.K.Ladda, A.P.P. for R.No. 2 – State.

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CORAM : M.T.JOSHI, J.

DATE OF JUDGMENT : 30th SEPTEMBER, 2015

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ORAL JUDGMENT :

1. Heard both sides. Perused record.

2. Aggrieved by the Judgment and Order dated 31/01/2002 passed by the learned Judicial Magistrate First Class, Parali Vaijinath in S.C.C. No. 456/2000 acquitting the present respondent from the offence punishable u/s 138 of the Negotiable Instruments Act, present Appeal is preferred by the complainant.

3. The case of the appellant was that the respondent No. 1 had purchased 27 bags of Catnine cement and some other articles from him for ₹ 29,000/- [Rupees Twenty Nine Thousand]. He, therefore, issued post dated cheques of different dates, as detailed below :

Sr.No	Particulars	Date	Value
1	Cheque No. 118265	11/07/1999	₹ 10,871/-
2	Cheque No. 118260	11/09/1999	₹ 5,000/-
3	Cheque No. 118263	01/11/1999	₹ 8,404/-
4	Cheque No. 118264	27/01/2000	₹ 4,725/-

4. The appellant presented the cheques, except the cheque dated 01/11/1999, with the banker. The cheque bearing No. 118263 was not accepted by the bank, as there was certain spelling mistake. The rest of the cheques, however, were returned for want of funds. The appellant, therefore, issued statutory notice and demanded the amount. As respondent No. 1 did not pay the amount within time, the complaint came to be filed.

5. According to respondent No. 1/accused, the complainant, witness Suresh Lonikar and he himself were carrying the work of glass wall insulation with cement in partnership with each other. Respondent No. 1 did not have any capital. Rest of them, however, contributed for the material. The appellant had, therefore, obtained blank cheques from respondent No. 1 having his signatures for purchase of material while paying the amount. The contract of M.S.E.B. was taken. Amount of ₹ 50,000/- [Rupees Fifty Thousand] was received from the first and second work from M.S.E.B.. The complainant/appellant and witness Suresh Lonikar, however managed to transfer the entire amount in their account by using certain blank cheques and have mis-

used rest of the cheques.

6. Learned Judicial Magistrate First Class found that respondent No. 1 had issued communication to the bank to stop the payment vide Exh. 49. It was further found that the amount mentioned in the cheques would show that the said cheques were not in accordance with any specific instalments, but were in haphazard manner. The amount of ₹ 50,000/-, ₹ 1,40,000/-, ₹ 73,000/- and ₹ 41,000/- were admittedly transferred to the account of the complainant under the name and style as “Gurukrupa Enterprises” during the relevant period. The witness of the complainant, viz. Suresh Lonikar had admitted that respondent No. 1 had licence for carrying the work of Thermal Power station of M.S.E.B. during the relevant period. In that view of the matter, it was found that the presumption was rebutted.

7. Upon hearing both the sides and also upon perusal of the reasonings given by the learned Judicial Magistrate First Class, it is found that the learned Magistrate has taken reasonable and probable view in the matter.

8. In the circumstances, Appeal stands dismissed.
The bail bonds of respondent No. 1, if any, stand cancelled.

[M.T.JOSHI, J.]

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