

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 736 OF 2003

Shantaram Tatyaba Thorat,
 Age 38 years, Occu.: Agril.,
 R/o. Jorve, Tq. Sangamner,
 Dist. Ahmednagar

.. Appellant
 (Orig. Complainant)

Vs.

1. Jijabapu S/o Shahaji Kakad,
 Age 41 years, Occu.: Business,
 R/o. Jorve, Tq. Sangamner,
 Dist. Ahmednagar .. **Orig. Accused**

2. The State of Maharashtra .. Respondents

WITH
CRIMINAL APPEAL NO. 737 OF 2003

Shantaram Tatyaba Thorat,
 Age 38 years, Occu.: Agril.,
 R/o. Jorve, Tq. Sangamner,
 Dist. Ahmednagar

.. Appellant
 (Orig. Complainant)

Vs.

1. Jijabapu S/o Shahaji Kakad,
 Age 41 years, Occu.: Business,
 R/o. Jorve, Tq. Sangamner,
 Dist. Ahmednagar .. **Orig. Accused**

2. The State of Maharashtra .. Respondents

Mr. S.K. Shinde, Advocate for appellant in both appeals
 Mr. S.T. Shelke, Advocate for respondent no.1 in both appeals
 Mrs. B.B. Gunjal, A.P.P. for respondent-State (736/2003)
 Mr. R.P. Phatke, A.P.P. for respondent/State (737/2003)

CORAM : M.T. JOSHI, J.

DATE : 26/06/2015

ORAL JUDGMENT :

Heard both sides.

2. Present both the appeals are heard together as those are arising out of the common transaction between the same parties.

3. Aggrieved by the acquittal of the respondent no.1 in both the proceedings by the learned Judicial Magistrate First Class, Sangamner from the offence punishable under section 138 of the Negotiable Instruments Act, the present appeals are preferred.

4. It was the case of the appellant-complainant that he alongwith the accused was running the partnership firm, namely, "Amit Mills". At the time of dissolution of the firm, an amount of Rs.2,95,000/- was agreed to be paid by the respondent no.1 to the another partners and towards the said repayment, two cheques of

the bank account of the partnership firm i.e. one for Rs. 65,000/- and another for Rs.2,30,000/- were passed by the respondent no.1 to him. The Cheques were presented to the banker, however, those cheques were returned as the account was closed. Thereafter, statutory notice within limitation was issued, however, false reply was issued by the respondent no.1. Therefore, two complaints were filed against him.

5. Defence was that, in-fact, the mills ran into huge losses. Therefore, there was nothing due against any of the partner, however, the present appellant was enraged because of the losses and he has misused the two blank cheques bearing the signatures of the present respondent no.1 i.e. partner of the firm and slapped the false cases.

6. The submissions from both the sides as well as the record would show that while as per the complainant, no deed of dissolution was executed, D.W. 1 had proved on record the dissolution agreement, which would show that nothing was due between the partners. Further, the Chartered Accountant of the firm, namely, D.W. 2

Sanjay Rathi has proved the audited accounts of the firm, which would show that the firm, at the time of dissolution, had suffered huge loss. Outstanding loan was of Rs.19,81,000/- and odd while the partner's capital in the name of respondent no.1 was Rs.2,77,057/-. Net loss of Rs.4,32,000/- and odd was there.

7. The learned Judicial Magistrate First Class took into consideration the admitted fact that the firm was unregistered and, therefore, when the amount was not recoverable through the civil suit, as per the settled law, the said amount could not have been recovered through the present complaints. It is further found that while according to the appellant, there is no contemporaneous document of the dissolution of firm, the document of dissolution proved by D.W.1 would show that nothing was to be paid to any of the partner.

8. In my view, the learned Judicial Magistrate First Class has taken a reasonable and probable view of the matter. In the present appeals against acquittal, no interference in any of the impugned orders is

required. In the result, the following order:-

9. Both the appeals are hereby dismissed without any order as to costs. Bail bonds, if any of the respondent no.1 shall stand cancelled.

10. Both the appeals stand disposed of.

Sd/-
[M.T. JOSHI]
JUDGE

arp/