

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 774 OF 2003

Anand Devidas Akude
Age : 37 years,
Occu. Private Service
R/o K 18, Hudco
Near Professors Colony
Savedi, Ahmednagar

.. Appellant

Vs.

1] Mr. Ulhas Shrinivas Varade
Director, The Brush Electricals P Ltd.,
4088, Chitale Road,
Behind Parvatibai Dahanu School,
Ahmednagar

2] State of Maharashtra
Formal Party

.. Respondents

Ms. Chinmayee Deshpande, Advocate h/f Mr. S.V. Natu, Advocate
for the appellant

Mrs. R.K. Ladda, A.P.P. for the respondent/State

CORAM : M.T. JOSHI, J.

DATE : 20/08/2015

ORAL ORDER :

Heard both sides.

2. Aggrieved by the recording of acquittal of present respondent no.1 from the offence punishable under section 138 of the Negotiable Instruments Act, the present appeal is preferred by the original complainant.

3. The appellant/complainant's case in short, is as under:-

. That respondent no.1 took an amount of Rs.55,000/- as hand-loan from the complainant in the month of May, 1998. Towards repayment, the respondent no.1 issued post dated cheque dated 1/7/1998 to the complainant. The cheque was placed for honouring before the concerned Bank twice. However, the same was returned back by the banker of the respondent no.1 on the count that the amount is not arranged for. Therefore, after dishonour of the cheque on 7/9/1998, the statutory notice was issued on 15/9/1998, calling upon the respondent no.1 to pay the amount under the cheque. However, despite receipt of the said notice, the same was not honoured and, therefore, the complaint came to be filed.

. The defence of the respondent no.1 was that the complainant and one Vishal Khedkar are close relatives. In-fact, three blank cheques were issued by the respondent no.1 and those were in the custody of

said Vishal Khedkar. Said Vishal Khedkar appears to have misused those cheques. Even F.I.R. was filed against said Vishal Khedkar by the respondent no.1 with the Police Station and, therefore, he sought acquittal.

4. Before the learned Judicial Magistrate First Class, Ahmednagar, the complainant examined himself alongwith the Clerk of the Banker of the respondent no.1 as well as one Ramdas Pawar, an employee of another bank, through whom the cheque was presented. Necessary documents were placed and proved.

5. The learned Judicial Magistrate First Class came to the conclusion that the complainant himself is serving as a Clerk in an Urban bank and, therefore, would not be in a position to advance an amount of Rs.55,000/-. The case of return of the cheque for insufficient funds was also not held to be proved. The cheque in question was issued by Brush Electricals Pvt. Ltd. Company, of which the present respondent no.1 was merely one of the director and, therefore, finding that there is no evidence to show that respondent no.1/accused is the person incharge or responsible for the

Company, on this ground, the acquittal came to be recorded.

6. Upon hearing both sides and upon going through the record, in my view, the learned Judicial Magistrate First Class has taken a reasonable and probable view. In the present appeal against acquittal, no interference is warranted. Hence, the following order:-

7. Criminal Appeal is hereby dismissed.

[M.T. JOSHI]
JUDGE

arp/