

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

**CRIMINAL APPEAL NO. 233 OF 2009**

Premkishor s/o Purushottam Bajaj

Age : 41 Yrs., Occ. Business,

R/o : Killari, Tq. : Ausa,

Dist. Latur.

.... APPELLANT/

[ORI. COMPLAINANT]

**V E R S U S**

Dnyanoba s/o Narayan Shinde

Age : 45 Yrs., Occ. Contractor,

R/o : Killari, Tq. : Ausa,

Dist. Latur.

.... RESPONDENT/

[ORI. ACCUSED]

.....

Mr. B.B.Dahiphale h/f Mr.N.P.Patil Jamalpurkar,

Advocate for Appellant.

Smt. Supriya Pansambal h/f Mr.V.D.Gunale,

Advocate for Respondent.

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**CORAM : M.T.JOSHI, J.**

**DATE OF JUDGMENT : 30<sup>th</sup> SEPTEMBER, 2015**

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**ORAL JUDGMENT :**

1. Heard both sides. Perused record.
2. Aggrieved by the Judgment and Order dated 27/08/2008 passed by the learned Judicial Magistrate First Class, Ausa in S.T.C.C. No. 325/2007 acquitting the present respondent from the offence punishable u/s 138 of the Negotiable Instruments Act, the present Appeal is preferred by the complainant.
3. The case of the complainant/appellant in short is as under.

He and the respondent are well acquainted with each other. The respondent is in the business of transport of sugarcane crop from various fields to the sugar factories. There are also professional business relations between the parties and both of them financially helped each other in case of any difficulty. In the situation, the respondent asked for an amount of ₹ 1,00,000/- [Rupees One Lakh] for purchase of diesel and to pay wages of the laboures. Since the complainant was having only ₹ 95,000/- [Rupees Ninety Five

Thousand], he paid the same to the respondent. The respondent promised to repay the same within two months and even issued cheque for ₹ 95,000/- dated 10/01/2007. Thereafter, however, the amount was not paid. The respondent protracted by seeking time. Ultimately, the respondent told that he has deposited the amount in the bank and, therefore, the complainant may present the cheque. The cheque was, therefore, presented in the bank on 19/02/2007. It was dis-honoured. Thereafter, statutory notice was issued, which was not accepted by the respondent and, therefore, the complaint came to be filed.

4. The defence of the respondent was that he sought his appointment as 'Mukadam' with the appellant. As a security, amount of ₹ 2,000/- was paid to the complainant along with two blank cheques signed by him. Thereafter, the complainant refused to engage the respondent. The respondent, therefore, asked for refund of the amount as well as cheques. However, after some days, he presented the said cheques and filed the complaint.

5. Before the learned Judicial Magistrate First

Class, complainant examined himself and one witness P.W. 2 Kamlakar Maruti Gawde, who had deposed that in his presence transaction took place. Learned Magistrate found that the presumption was rebutted and, therefore, the order came to be passed.

6. Learned counsel for the appellant submits that, in fact, all the facts of passing of the cheque, dishonour of the same and service of the notice are proved. Learned Magistrate, however on the basis of certain irrelevant facts held that presumption is rebutted.

7. On the other hand, learned counsel for the respondent submits that on the basis of the admissions of the complainant himself, learned Magistrate has arrived at the conclusion.

8. On the basis of this material, following point arise for my determination.

Whether the complainant has proved that the respondent failed to make the payment of ₹ 95,000/- despite the dishonour of the cheque

issued by him towards the legally enforceable liability ?

9. My finding is in the negative for the following reasons.

10. The case of the appellant is that the parties are well acquainted with each other and they had also financial transactions i.e. of giving hand loan to each other in case of any difficulty. In cross examination, he has admitted that the respondent had only bullock-cart and not having any truck. It is the case of the complainant that the respondent had asked for an amount of ₹ 1,00,000/- for purchase of diesel and to pay wages of the laboures. He further admitted the custom that while executing an agreement with sugar factory, the truck owner and Mukadam both have to furnish blank cheques signed by them. Considering all this material on record, learned Magistrate acquitted the respondent.

11. In the present Appeal against acquittal, since the reasons are found not to be perverse, those are not required to be disturbed.

12. Present Criminal Appeal, therefore, is dismissed.  
The bail bonds of the respondent, if any, stand cancelled.

**[M.T.JOSHI, J.]**

KNP/Cr. Appeal 233.2009 - [ J ]