

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

**APPELLATE SIDE**

**CRIMINAL APPEAL NO.567 OF 2013**

Milind Shamrao Suryawanshi      ...      **Appellant**

V/s.

Suhas Keshav Maindargi & Anr.      ...      **Respondents**

.....

Mr.Anant Vadgaonkar, Advocate for the Appellant

Mr.PD.Pise, Advocate for the Respondent No.1.

Ms.S.S.Kaushik, APP for the Respondent/State.

....

**CORAM : ABHAY M. THIPSAY J.**

**DATED : 3RD MARCH 2015**

**ORAL JUDGEMENT :**

1.            The appellant had prosecuted the respondent No.1 on the allegation of his having committed an offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The Judicial Magistrate, First Class, Sangli, after holding a trial, found respondent No.1 not guilty and passed an order of acquittal. The appellant is aggrieved by the said order of acquittal.

2.            I have heard Mr.Vadgaonkar, the learned counsel for the appellant. I have heard Mr.Pise, the learned counsel for the respondent No.1. I have also heard Ms.Kaushik, the learned

Additional Public Prosecutor for the respondent/State. With their assistance, I have gone through the impugned Judgment, complaint and the annexures to the appeal.

3. For the sake of convenience and clarity, the appellant shall, hereinafter, be referred to as “the complainant” and the respondent No.1 as “the accused”.

4. The complainant's case was to the effect that as the accused wanted a premises, a particular gala in Kusum Vihar Apartment was given by the complainant to the accused on rent in February 2008. That, the accused took possession of the said gala and started his business there. That, the accused was to pay a monthly rent of Rs.5,000/- to the complainant plus Rs.20,000/- as deposit. According to the version in the complaint, the accused issued a cheque in the sum of Rs.75,000/- to the complainant, which was towards the rent for the seven months from February 2008 to August 2008, a deposit of Rs.20,000/- and an advance of the rent for the next four months i.e. Rs.20,000/-. That, this cheque was dishonoured and that, since in spite of demand having been made, the amount of the cheque was not paid, the prosecution came to be launched.

5. During the course of trial, it transpired *inter alia* that a partnership firm of which the complainant is a partner had rented

the same gala to the wife of the accused by a written agreement. The said gala was given in the month of April 2008. That, the agreed rent in respect of the said gala had been paid to the said Firm by the wife of the accused, is not in dispute.

6. The Magistrate, *inter alia*, observed that it was not, therefore, possible that the same gala had been given on rent to the accused during the period from April 2008 to August 2008.

7. The Magistrate, on the evidence adduced before her, found the defence of the accused:- namely, that a blank signed cheque had been obtained from the accused before the agreement between the complainant-Firm and the wife of the accused was entered into, probable.

8. The view of the matter as taken by the Magistrate appears to be proper and legal.

9. The appeal is summarily dismissed.

**(ABHAY M. THIPSAY J.)**