

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 53 OF 2000

APPELLANT :- Ranjit Shantilal Parekh
(Ori. Complainant) residing at 43, Mukta,
Sainik Vasahat,
Kolhapur.

...VERSUS...

RESPONDENTS :- (1) Mahavir Jayantrao Chowgule,
residing at Mahavir, 9th Lane,
Jaysingpur, Ta.: Shirol, District Kolhapur.

(2) State of Maharashtra,

None for the Appellant.

Mrs. G.P. Mulekar, APP, for the Respondent/State.

CORAM : S.B. Shukre, J.

DATED : 22nd June, 2015.

ORAL JUDGMENT :

This is an appeal preferred against the judgment and order dated 23.6.1999 delivered in Regular Criminal Case No. 155 of 1990 by the Chief Judicial Magistrate, Kolhapur.

2. Briefly stated, facts of the case are as under :

(i) Appellant is the original complainant who had filed a complaint case instituted otherwise than upon a police report against respondent no. 1. It was alleged by him that he had paid respondent no. 1 an amount of Rs.01,20,000/- as respondent no. 1 was in need of the money in order to carry out repairs to his bore machine. According to the appellant, respondent no. 1 had promised to return the amount within 15 days and, therefore, he had issued a cheque for Rs.1,20,000/- bearing No.25865 drawn on his account with Jaysingpur Udagaon Co-operative Bank Ltd., Jaysingpur. The appellant submitted that while respondent no. 1 encashed the cheque in his favour, the cheque issued by respondent no. 1 in favour of the appellant for Rs.1,20,000/- towards repayment of the amount borrowed by him from the appellant could not be encashed by him. The appellant was informed by his banker vide letter dated 26.12.1989 that the cheque amount could not be paid for the reason "referred to drawer". This letter was received by the appellant on 1.1.1990. Therefore, on 4.1.1990 the appellant issued a notice through registered post with acknowledgment due and also under postal certificate through his advocate to respondent no. 1 demanding amount of the said cheque. Respondent no. 1, however, refused to accept the notice. But, on 5.4.1990, respondent no. 1 met the

appellant and requested him to deposit the cheque in question once again. Accordingly, the appellant deposited the cheque for collecting the amount thereunder on 5.4.1990. But, the cheque was again dishonoured and the complainant was informed of its dishonour on 23.4.1990 by his banker. Again on 25.4.1990 the appellant issued notice to respondent no. 1 demanding amount of cheque, but in vain. The notice was refused to be accepted by respondent no. 1. Left with no other alternative, the appellant filed a complaint case under Section 138 of Negotiable Instruments Act (for short N.I. Act) and also under Sections 420 of Indian Penal Code against respondent no. 1.

(ii) Learned Chief Judicial Magistrate framed charge for the offence punishable under Section 138 of N.I. Act and under Section 420 of Indian Penal Code against respondent no. 1 and as he pleaded not guilty to the same, he was tried in accordance with law.

(iii) On merits of the case, the learned Chief Judicial Magistrate found that the appellant could not prove the offences charged against respondent no. 1 beyond reasonable doubt and, therefore, by his impugned judgment and order, the learned Chief Judicial Magistrate acquitted respondent no. 1 of the said offences. Not being satisfied with the same, the appellant is before this Court in the present appeal.

3. This appeal is on board for final hearing for quite a long period of time. Nobody has appeared on behalf of the appellant, although this Court waited for considerable time for the appellant or his learned counsel to appear before this Court. Ultimately, in view of the mandate of Section 386 of Code of Criminal Procedure, this Court decided to proceed with the disposal of the appeal on its own merits.

4. I have heard learned APP for the respondent/State. I have carefully gone through the record of the case and also the impugned judgment and order.

5. It is seen from the impugned judgment and order that the learned Chief Judicial Magistrate, after carefully considering the evidence available on record, reached to the conclusion that the appellant failed to prove the notices vide Ex. 35 dated 4.1.1990 and Ex.65 dated 25.4.1994 as duly received by respondent no. 1. It was the case of the appellant that these notices could be presumed to be duly received by respondent no. 1 as there were endorsements on both these notices made by the postal authorities that these notices could not be served upon the addressee because the addressee was out of station. However, the complainant, so far as Ex.35 is concerned, admitted that it could not be served upon respondent no. 1 for the reason that respondent no. 1 was out of station. As regards the other notice

vide Ex.65, the endorsement made by the postal authority clearly showed that the notice was not served upon respondent no. 1 as he had gone to another town, Miraj. The evidence brought on record was thus against the contention of the complainant, i.e. the appellant, that the notices were refused to be accepted by respondent no. 1 and, therefore, the Court below rightly refused to draw a presumption of service of notice upon respondent no. 1. There was also an admission in the complaint itself that respondent no. 1 used to visit different places in connection with his business. The cumulative effect of this admission and the facts which had appeared on record through the evidence of the complainant would be that the notices in question were not duly received by the respondent no. 1, being out of station. The notices sent under postal certificate could also not be said to be presumptively received by respondent no. 1 for the reason that at the relevant times, the respondent was out of town. The concerned post man was not examined by the complainant and, therefore, the learned Chief Judicial Magistrate has rightly come to the conclusion that the evidence adduced by the appellant was not sufficient to enable the Court to draw a presumption of due service of notices upon respondent no. 1. The learned Chief Judicial Magistrate has, therefore, rightly given benefit of doubt to respondent no. 1 by holding that the appellant failed to prove beyond reasonable doubt the essential ingredients of the offence contemplated under Section 138 of N.I. Act.

6. As regards the finding recorded by the trial Court for failure of the complainant to bring home to respondent no. 1 his guilt for an offence punishable under Section 420 of Indian Penal Code also, I see no reason to make any interference therewith. I could not see any evidence available on record showing that there was an intention on the part of respondent no. 1 to deceive or cheat the appellant when he issued the cheque in question. There is only a plain averment made by the appellant to the effect that at the time when the cheque (Ex.43) in question was issued by respondent no. 1 in favour of the appellant, it was for an amount of Rs.1,20,000/-, the amount standing to the credit of respondent no.1's account was muchless than the amount of the cheque. It is to be noted here that the cheque that was issued by respondent no. 1 was a post dated cheque and, therefore, some time was always available for respondent no. 1 to make up for the deficit amount that may have been standing to the credit of his account with the drawee bank. Therefore, something more was required to be shown by the appellant. Some circumstances enabling the Court to draw an inference of nurturing of dishonest intention by respondent no. 1 since the beginning of the transaction ought to have been brought on record by the appellant. However, that has not been done by the appellant and, therefore, I do not think that any material irregularity or perversity could be found with the finding of innocence recorded by the trial Court as regards the

offence of cheating that was charged against respondent no. 1.

7. In the result, I find that no case has been made out for making interference with the impugned judgment and order and the appeal deserves to be dismissed.

8. The appeal stands dismissed.

JUDGE

/TA/