

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.283 of 1998

Navbharat Clearing and Forwardings
through its partner,

Rameshchandra Surajmal Jaju .. Appellant

Versus

The State of Maharashtra .. Respondent

None for the appellant.

Mr.Sudhir Halli with Mr.Santosh Musale, Advocate for respondent
no.1.

Mrs.M.R.Tidke, APP for the Respondent State.

CORAM : ABHAY M. THIPSAY, J.

DATED : 30th JUNE, 2015

ORAL ORDER :-

1 The appellant is the original complainant. He had prosecuted the respondent no.1 on the allegation of the respondent having committed the offence punishable under section 138 of the Negotiable Instruments Act. By an order dated 6th March 1997, the Chief Judicial Magistrate acquitted the respondent as contemplated under section 256 of the Code of Criminal Procedure. Being aggrieved by the said order of acquittal, the appellant has, after obtaining special leave of this Court, filed the present Appeal.

2 None appears for the appellant when called out. The matter was on board yesterday, but yesterday also none had

appeared for the appellant when called out. Under these circumstances, the Appeal is being decided after going through the Appeal Memo, the Record and Proceedings of the case and after hearing Mr.Sudhir Halli, the learned counsel for the respondent no.1 (for the sake of convenience and clarity, the 'appellant' shall hereinafter be referred to as the 'complainant' and 'respondent no.1' as 'the accused').

3 It is seen that the complaint was filed on 13th December 1995, and summons was ordered to be issued against the accused on the same day. The summons was served upon the accused, and on the returnable date thereof i.e. 12th September 1996, the accused was present with his Advocate. Thereafter, the matter repeatedly appeared on the board of the Chief Judicial Magistrate and was being adjourned from time to time till the order of acquittal came to be passed, as aforesaid, on 6th March 1997.

4 That the Magistrate had power and authority to pass an order of acquittal on account of the absence of the complainant, may not be doubted or disputed. The only question is whether the discretion that was available with the Magistrate in that regard was exercised by him properly, and in accordance with law.

5 The learned counsel for the accused pointed out that the complainant had been remaining absent on a number of dates. Indeed, from the roznama of the case before the Magistrate, it appears that the complainant had been remaining absent on most

of the dates to which the complaint case was being adjourned. It is true that on a number of dates, the accused also was not present before the Magistrate, and as even the plea of the accused was not recorded, it was not essential for the Magistrate to have passed an order of acquittal on account of the absence of the complainant.

6 As aforesaid, however, the Magistrate had a discretion in the matter. Since the complainant had been repeatedly remaining absent, there was nothing wrong on the part of the Magistrate to have passed an order of acquittal.

7 The case relates to the dishonor of a cheque in the sum of Rs.5000/-. Even before this Court, the complainant did not remain present at the time of final hearing of the Appeal.

8 Since there is nothing improper or illegal in the order passed by the Magistrate, and since there is nothing to show that the discretion available to him in that regard, had been exercised by him improperly or arbitrarily, I am not inclined to interfere in the matter.

9 Appeal is dismissed.

10 No order as to costs.

(ABHAY M.THIPSAY, J)