

vks

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
***CRIMINL APPELLATE JURISDICTION***  
**CRIMINAL APPEAL NO. 577 OF 2002.**

|                                           |   |                       |
|-------------------------------------------|---|-----------------------|
| Ramashankar Jhanwar                       | ] |                       |
| age: 31 years,                            | ] |                       |
| Proprietor of M/s Tex Temp Syntex         | ] | ... <u>Appellant.</u> |
| 22, Nana Shankar Seth Smriti,             | ] | Original              |
| 2 <sup>nd</sup> floor, 380/382, Jagannath | ] | complainant.          |
| Shankar Seth road, Mumbai 400 002         | ] |                       |

V/s.

|                                                 |   |                     |
|-------------------------------------------------|---|---------------------|
| 1. Ramavtar S. Jhanwar,                         | ] |                     |
| age: adult, Proprietor of M/s Satya Industries  | ] | <u>Respondents.</u> |
| 95, Tambakata, Pydhonie, 4 <sup>th</sup> floor, | ] | Respondent          |
| Mumbai 5 400 003.                               | ] | No. 1.              |
|                                                 | ] | original            |
| 2. The State of Maharashtra                     | ] | accused.            |

Mr. Vivek Babar i/by Mr. M.S. Mohite, for the appellant  
Mr. H.J. Dedia, APP for the State.  
Mr. Arjun Shilwant I/by PRS Legal, for for the Respondent No.1.

**CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.**

**DATE : 8<sup>th</sup> DECEMBER, 2015.**

**ORAL JUDGMENT: [Per : Dr. Shalini Phansalkar-Joshi, J.]**

1. This appeal is preferred by original complainant, challenging the judgment and order dated 4.11.2000, passed by Additional Chief

Metropolitan Magistrate, 41<sup>st</sup> Court, Girgaum, Mumbai, thereby acquitting respondent No.1 for the offence punishable under Section 138 of the Negotiable Instruments Act.

2. Brief facts of the appeal can be stated as follows :-

According to appellant the textile yarn was sold to the respondent No.1 accused for consideration of Rs.9,23,203/-. In part payment of the same, respondent No.1 has issued in all four cheques. When the said cheques were deposited with Greater Bombay Co-operative Bank, Bhuleshwar Branch, Mumbai for realization, they were dishonoured. Hence after sending statutory notice, as required under Section 138 of the Negotiable Instrument Act, appellant filed Criminal Case against respondent No.1 before trial Court.

3. In support of its case the appellant examined himself, his employee P.W.2 Manoj Shah, P.W.3 Madhukar Damke the clerk of the said bank working at Zaveri Bazar Branch, P.W.4, Pawan Darak, the broker between the appellant and respondent.

4. On appreciation of their evidence, the trial Court was pleased to hold that appellant has failed to prove its case against respondent No.1 and accordingly acquitted respondent No.1.

5. This judgment of the trial Court is challenged in this appeal. I have heard learned counsel for appellant and respondents.

6. In my considered opinion, the appeal can be disposed of on a very short issue. Admittedly in the instant case, two cheques were issued in the name of Mayur Textile and two cheques were issued in the name of Monika Textiles. The appellant has admitted in his cross examination that he does not know Mayur Textile and Monika Textiles. He has further admitted that he has no concern either with Mayur Textile or Monika Textile. He has further admitted that he even does not know what was adjustment for issuing cheques in the name of Mayur Textile and Monika Textiles. In view of his evidence on record, it necessarily follows that the appellant cannot be called as “holder in due course” of the cheques which came into his possession. The presumption under Section 139 of Negotiable Instruments Act or for that matter under Section 118 of N.I. Act, is applicable only in the case of “holder in due course”. In the instant case, as the cheques were not issued in the name of appellant and as admitted by him even he does not have any concern

with the firms Mayur Textile and Monika Textiles, in whose names the cheques were issued, the appellant is not holder in due course and therefore, he can not get benefit of section 139 or 118 of N.I. Act. As a matter of fact, his case even cannot fall under Section 138 of the N.I. Act and hence after giving elaborate reasons, the trial Court has acquitted respondent No.1, on failure of the appellant to prove charge against respondent No.1. The appeal, therefore, holds no merit. Hence stands dismissed.

**[DR. SHALINI PHANSALKAR-JOSHI, J.]**

C E R T I F I C A T E

Certified to be true and correct copy of the  
original signed judgment.