

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 807 OF 1998

The Kagal Co.op. Doodh Vyavsaik
Sanstha, Tal. Kagal through the Chairman,
Dhondiram Maruti Mali, Age 45 years,
Occ. Agriculture, R/o. Kagal,
Tal. Kagal, Dist. Kolhapur

.. Appellant

v/s.

1. M/s. Pankaj Dairy Products through
its Proprietor Sou. Smita Pradip Shahapurkar,
Age 48 years, Occ. Business,
R/o. Laxmi Building, Block No.9,
Bhagya Nagar, Tailakwadi,
Belgaum Dist. Belgaum (Karnataka State)

2. The State of Maharashtra

.. Respondents

Mr. Nagesh Chavan i/b Tejpal S. Ingale for the appellant
Mr. Kalpesh Patil a/w Nikhil Chavan for the respondent no.1
Mr. Rajesh More, APP for the respondent State

CORAM : SMT. ANUJA PRABHUDESSAI, J.

Reserved on : 13th OCTOBER, 2015

Pronounced on : 23rd NOVEMBER, 2015

JUDGMENT :

1. This is an appeal from an order of acquittal in C.C. No.62 of 1991 under Section 138 of the N.I. Act. The appellant herein had lodged a complaint under Section 138 of the N.I. Act alleging that it

had supplied milk to the respondent no.1 as per the agreement dated 26.01.1991. The complainant had alleged that the respondent accused had issued a cheque for Rs.11,000/- towards the price of the milk supplied. The said cheque was deposited in the bank but was dishonoured for 'insufficient funds'. The appellant complainant had issued a statutory notice, however, the respondent accused refused to accept the same and furthermore refused to pay the cheque amount. The appellant complainant, therefore, lodged a complaint under Section 138 of the N.I. Act.

2. Upon being served with the summons, the proprietor of the respondent accused put in her appearance, pleaded not guilty and came to be tried. The appellant complainant examined himself and the postman PW-2 Sheshgiri Kulkarni and two bank officials PW-3 Anand Ghote and PW-4 Sadashiv Chavan. The statement of the respondent accused was recorded under Section 313 of the Cr.PC. The defence of the respondent accused was of total denial. The respondent accused had also filed written statement, wherein the respondent accused had alleged that the complainant had not

supplied the milk as per the agreement. The respondent accused denied that she was liable to pay any amount towards supply of the milk. The respondent accused further stated that the officials of the complainant had taken the subject cheque from her forcibly.

3. Upon considering the evidence adduced by the appellant complainant, the learned Magistrate held that the complainant had not established that the subject cheque was issued towards the legally enforceable debt. The learned Magistrate, therefore, acquitted the respondent accused of offence under Section 138 of the N.I. Act. Being aggrieved by the said judgment, the appellant complainant has preferred this appeal.

4. I have perused the record and considered the arguments advanced by the learned Counsels for the respective parties.

5. At the outset, it may be mentioned that in the case of ***Ghurey Lal Vs. State of Uttar Pradesh (2008) 10 SCC 450*** the Hon'ble the Supreme Court has reiterated that the Appellate Court in dealing

with the case in which the Trial Courts have acquitted the accused should bear in mind that the Trial Court's acquittal bolsters the presumption that he is innocent. The Appellate court must give due weight and consideration to the decision of the Trial Court as the Trial Court had the distinct advantage of watching the demeanour of the witnesses, and was in a better position to evaluate the credibility of the witnesses. It is, therefore, well settled that the appellate Court should not lightly disturb the order of acquittal, unless the order is patently illegal and perverse.

6. Reverting to the facts of the case, it is not in dispute that the appellant and the respondent had entered into an agreement dated 26.01.1991 whereby the complainant had agreed to supply to the respondent accused minimum 500 ltrs. to maximum 1500 ltrs. of milk per day for the period commencing from 26.01.1991 till 27.01.1992. As per the said agreement, the accused had agreed to pay the price of the milk on every Thursday and Saturday.

7. PW-1 has deposed that the accused was liable to pay

Rs.45,152.23 towards the price of the milk. He has produced the extract of books of account at Exh.23. Undoubtedly, in terms of Section 34 of the Evidence Act, the entries in account books regularly kept in course of business are relevant piece of evidence and are admissible. Such entries by themselves are not sufficient enough to charge any person with liability. In the instant case, apart from the bare statement of PW-1 that the society has maintained the account of the accused, there is absolutely no evidence to prove that the said book of accounts was kept regularly in the course of business. The extract at Exh.23 therefore, does not fulfill the requirements of Section 34 of the Indian Evidence Act. Furthermore, the complainant had not produced the receipt book, cash book or account book before the Court. This was relevant that the accused had taken a specific defence that the complainant had not supplied the milk as per the terms of the agreement. It is also to be noted that at the time of the execution of the said agreement, the respondent accused had paid Rs.15,000./- as a deposit. The said amount is still lying with the complainant. However, the same is not reflected in the books of the account at Exh.23 and this also casts a

cloud doubt on the genuineness of the said extract of book of accounts at Exh.23.

8. The evidence adduced by the complainant, therefore, does not prove that the accused was liable to pay Rs.45,152.23 towards the price of the milk. It is also pertinent to note that CW-1 has admitted in his cross-examination that it had filed suit against the respondent accused for recovery of Rs.11,000/-. Filing of the suit for Rs.11,000/- is itself belies the contention of the complainant that the respondent accused was liable to pay Rs.45,152.23.

9. It is also to be noted that the respondent accused has stated that CW-1 and one Magar, Secretary of the complainant had come to her house at Kagal, Belgaum on 03.05.1991 and coerced her and induced her into signing the cheque. CW-1 has denied that he and Magar had been to Kagal and had forcibly obtained the cheque from the respondent accused. However, the respondent accused had produced the receipt dated 03.05.1991 at Exh.30. A perusal of which clearly reveals that Mr. Magar had received a cheque on

03.05.1991 at Kagal, Belgaum. This fact coupled with the testimony of DW-1 Pravin Shahapurkar probabalize the defence that the CW-1 and Mr. Magar, Secretary of the complainant had been to the house of the respondent accused at Kagal, Belgaum and had obtained the said cheque from her.

10. It is also pertinent to note that the complainant had also filed the suit for recovery of Rs.11,000/-. However, the complainant had not succeeded in the said suit and this fact also fortifies the findings of the learned trial Judge that the said cheque was not issued towards legally enforceable debt.

11. Under the circumstances and in view of the discussion supra, the complainant has failed to establish that the cheque was issued towards discharge of legally enforceable debt or liability. The findings of the learned trial Court are neither illegal nor perverse and consequently cannot be interfered with. The appeal, therefore, has no merit and is hereby dismissed.

(ANUJA PRABHUDESSAI, J.)