

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO.679 OF 1995

Manohar Mahadev Gandhi,
Age 38 years, Occu. : Service,
Residing at Mahad.

... **Appellant**

V/s.

- 1) Ramesh Sundar Sadvilkar
Age 37 years, Residing at
Nave Nagar, Mahad.

- 2) The State of Maharashtra

... **Respondents**

.....

None for the Appellant
Mrs.M.R.Tidke, APP for the Respondent/State.

....

CORAM : ABHAY M. THIPSAY J.

DATED : 23RD JUNE 2015

ORAL JUDGMENT :

1. Parties and their advocates are absent.
2. The appeal is being listed on board since 8th June 2015 and though it appeared on board on a number of dates, on no occasion the counsel for the parties were present. The appeal is against an order of acquittal and is pending since 1995.

3. Under the circumstances, it does not appear desirable to adjourn the hearing of the appeal any further. It is, therefore, being decided after going through record of the case, which includes the impugned judgment and the evidence adduced during the trial.

4. The appellant is the original complainant, who had prosecuted the respondent on the allegation that the respondent had committed an offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The cheque in question was in the sum of Rs.7,500/-.

5. During the trial, the appellant examined himself and two more witnesses. The respondent examined himself in defence. Additionally, he also examined one Pandurang Sawant as a defence witness.

6. According to the complainant, he had paid an amount of Rs.7,500/- to the respondent in cash on 02/10/1993 and in repayment thereof the respondent had issued a post-dated cheque, i.e. cheque dated 05/10/1993 in the sum of Rs.7,500/-. The defence of the appellant was that he had never taken any loan and that the cheque in question had been issued in respect of a transaction of 'Lucky Draw Scheme' to one Shri.Sawant.

7. The learned Magistrate found the defence of the respondent probable, At any rate, he was not satisfied about the truth of the appellant's version.

8. The perusal of the impugned judgment shows that the view of the matter, as taken by the Magistrate, is a *possible view*. The appellant has not chosen to remain present through his counsel, and make submissions in support of the appeal.

9. Since I find that the view of the matter, as taken by the Magistrate, is a *possible view*, it would not be proper to interfere with the finding of the acquittal, as recorded by the Magistrate.

10. The appeal is dismissed.

(ABHAY M. THIPSAY J.)