

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

CRIMINAL APPEAL NO. 636 OF 1996.

Mahendrakumar Narottamdas Gandhi .. Appellant

v/s.

The State of Maharashtra . ..Respondents

Mr. K.S.Irani for the Appellant.
Mrs. R.V.Newton, APP for the State.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 12th OCTOBER, 2015.**

JUDGMENT.

1. The appellant herein has challenged the judgment dated 28.3.1995, whereby the learned Addl. Chief Metropolitan Magistrate, 40th Court, Girgaum, Mumbai, has acquitted the respondent nos.1 and 2 for offence under Section 138 of the Negotiable Instruments Act.

2. Brief facts leading to this appeal are as under:

The appellant was the complainant in C.C.No.221/S/1994 filed under Section 138 of Negotiable Instruments Act. The complainant

had averred that the respondent-accused nos.1 and 2 were carrying on business in the name and style of Kanchan Investment and Property Developers having its registered office at Forjett Street, Bombay 400 036. The petitioner has further stated that the respondent-accused had issued two cheques bearing nos.25217 and 25218 dated 10.9.1990 for Rs. 1,00,000/- and Rs.30,000/- respectively. The said cheques were dishonoured, and despite receipt of the statutory notice the respondent accused did not pay the cheque amount. Hence the appellant initiated proceeding under Section 138 of the Negotiable Instruments Act against the aforesaid respondent nos.1 and 2.

3. Having been served with the summons, the respondent-accused put in their appearance before the trial court. They pleaded not guilty and claimed to be tried. The evidence of complainant (PW1) came to be recorded. The statement of respondent-accused was recorded under Section 313 of Cr.PC. Upon considering the evidence on record, as well as the submissions advanced by the respective parties, the learned Magistrate held that the appellant-complainant

had proved that the respondent nos.1 and 2 had issued the cheques in question and that the said cheques were dishonoured. However, the complainant did not give any details of the transaction in respect of which the accused had issued the subject cheques. The learned Magistrate further held that the complainant had also failed to prove that he had issued statutory notice and had thus not complied with the mandatory requirement of Section 138(B) of the Negotiable Instruments Act. Based on these findings the learned Magistrate acquitted the respondent. Aggrieved by the acquittal, the appellant-complainant has preferred this appeal.

4. Mr.Irani, learned counsel for the appellant has submitted that the learned trial Judge has erred in holding that the appellant had not issued a statutory notice to the respondent-accused. He has submitted that the appellant had produced a copy of the notice addressed to the respondent accused which amply proves that the complainant had issued the statutory notice calling upon the respondent-accused to make the payment within 15 days of receipt of the notice. He has further submitted that the acknowledgment

receipt though not exhibited, forms part of the record and perusal of the same, shows that the said notice was received by the respondent-accused. He therefore claims that the findings of the learned trial Judge are totally erroneous and cannot be sustained.

5. I have considered the submissions advanced the learned Advocate for the appellant and perused the record. The records reveal that the appellant-complainant had lodged a complaint under Section 138 of the Negotiable Instruments Act alleging that the respondents are carrying on the business in the name and style of Kanchan Investment and Property Developers and that they had issued two cheques for total amount of Rs.1,30,000/- and that the same were dishonoured. As rightly observed by the learned trial Judge, the complaint is very cryptic and does not give any details of the transactions between the appellant-complainant and the respondent-accused. Be that as it may, a perusal of the cheques at Exhibit P-1 reveals that the said cheques were issued by one A.C.Mehta, partner of Kanchan Investment and Property Developers. The complaint does not disclose that the subject cheques were issued

on behalf of the partnership firm or that the respondent accused were being prosecuted with the aid of Section 141 of Negotiable Instruments Act as partners of the partnership firm. There are no basic averments in the complaint to indicate that on the date of offence the respondent-accused were the partners of Kanchan Investment and Property Developers, a partnership firm, and that they were incharge of and responsible for the conduct of the business of the company.

6. It is also to be noted that the firm, Kanchan Investment and Property Developers was not arrayed as accused and the statutory notice required under Section 138(b) was not served on the partnership firm or on the respondent no.2. Needless to state that for maintaining the prosecution under Section 41 of the Negotiable Instruments Act, arraying the partnership firm as an accused and issuance of the statutory notice is imperative. As stated earlier, the appellant has not arrayed the partnership firm as accused and has not issued the statutory notice to the partnership firm. This being the case, the respondents could not have been held guilty for the offence

allegedly committed by the partnership firm.

7. Under the circumstances, and in view of the discussion supra, I do not find any reason to interfere with the order. Hence, appeal is dismissed.

(ANUJA PRABHUDESSAI, J.)