IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 182 OF 2000

Indermal Dargaji Jain
of Bombaym Indian Inhabitant,
Proprietor of M/s. Roshan Steen,
125/129, Bhandari Street,
Bombay 400 004. :: **APPELLANT**

-: Versus :-

1. Bhikamchand Danmal Jain,
Proprietor of M/s. Bharat Metal
Rolling Mills,
Shop No. 5/3, Gate No. 14(1),
Awadhan, Dhuliya
(State of Maharashtra).

2. The State of Maharashtra. :: **RESPONDENTS**

None for the appellant.
None for respondent No. 1.
Ms G. P. Mulekar, A. P. P. for respondent No.2-the State.

CORAM : S. B. SHUKRE, J.
29th JUNE, 2015

O R A L J U D G M E N T

1. This is an appeal preferred against the judgment and order dated 11/01/2000 delivered in Case No. 117/S/1991 by Additional Chief Metropolitan Magistrate, 4th Court, Girgaum, Mumbai, thereby acquitting respondent No.1 of the offence punishable under Section 138 of the Negotiable Instruments Act

(hereinafter referred to as, "N.I. Act", for short). Briefly stated, the facts of the case are as under.:

The case of the appellant-complainant was that he was a proprietor of M/s. Roshan Steel and was carrying his business at 125/129, Bhandari Street, Mumbai. It was submitted by him that respondent No.1 was also carrying on business under the name and style as, "M/s. Bharat Metal Rolling Mills" at Dhuliya. It was further submitted by him that respondent No.1 had purchased from him stainless steel goods worth Rs.5,84,531/- given under three invoices dated 22/4/1991, 25/4/1991 and 25/4/1991 and that goods were also delivered to respondent No.1. Respondent No.1, upon receipt of delivery of goods, had issued an acknowledgment of the same by his letter dated 25/4/1991 and also issued him a cheque bearing No.886919 dated 25/4/1991 for Rs.5 lac drawn on Dena Bank, Gulalwadi Branch. This cheque was deposited by the complainant with his account in Union Bank of India, Bhuleshwar Branch on 10/5/1991, but the same was returned unpaid on the ground, "*Funds expected and present again*" by a memo dated 17/5/1991.

The complainant sent notice to respondent No.1 on 08/6/1991, but in vain. The complainant, therefore, filed complaint under Section 138 of the N.I. Act read with Section 420 of the Indian Penal Code against respondent No.1. After recording verification statement of the complainant, the case was sent by the trial Court to police for its report under Section 202 of the Criminal Procedure Code. Police submitted its report and on perusal thereof and also the complaint and documents available on record, the trial Court found that a prima facie case for proceeding under Section 138 of the N.I. Act and Section 420 of the Indian Penal Code was made out and, therefore, summons was issued to respondent No.1. After his appearance before the Court, charge was, however, framed against respondent No.1 for an offence punishable under Section 138 of the N.I. Act only. Since he had not pleaded guilty of the offence charged, he was tried in accordance with law.

On merits of the case, learned Magistrate found that the evidence brought on record by the complainant and also the defence taken by respondent No.1 disclosed that the case of the complainant that cheque in question was issued to him in discharge of any debt or liability by respondent No.1 was of doubtful nature and that defence of respondent No.1 that out of several blank cheques issued by him in favour of the complainant or the appellant, as a part of business practice, one cheque i.e. the cheque in question was misused by the appellant and without it being issued for discharge of any liability, it was falsely shown to be issued in discharge of such liability was probablised and, therefore, by its judgment and order dated 11/01/2000, learned Magistrate acquitted the appellant in the present case. Not being satisfied with the same, the complainant or the appellant is before this Court in the present appeal.

2. This case is on board for final hearing for quite some time. Today when the matter was taken up for final hearing, nobody appeared on behalf of the appellant. Similarly, nobody has also appeared on behalf of respondent No.1, the accused in the present case. However, Ms Mulekar, learned A.P.P. for respondent No.2-the State is present before this Court.

3. This appeal being very old and there being nobody interested to prosecute it on behalf of the appellant, I have decided to dispose of this appeal on merits of the case following the mandate of Section 386 of the Criminal Procedure Code. Accordingly, I have heard Ms Mulekar, learned A.P.P. for respondent No.2-the State. I have carefully gone through the record of the case. I have also perused the judgment and order impugned herein.

4. Learned A.P.P. submits that this Court may pass appropriate order in the appeal,

5. It is seen from the impugned judgment and order that learned Magistrate has found that the complainant failed to prove beyond reasonable doubt the most material fact of issuance of

cheque in question by respondent No.1 in favour of the appellant and it was that the cheque was issued for discharge, in part or in full, of any debt or any other liability, which respondent No.1 owed to the appellant at the time when the cheque in question was issued by him. Learned Magistrate has found that the evidence on record, especially the admissions given by the complainant in his examination-in-chief, clearly show that the complainant or appellant was acting as a broker for the accused prior to the transaction underlying the cheque in question and that even though, it was the positive case of the appellant about purchasing of the goods sold to respondent No.1 from Mangilal Vyas and Mangilal Shamlani, the appellant could not produce on record any receipts showing purchase of goods from Mangilal Shamlani. He further found, on the contrary, admissions given by the appellant to the effect that he had purchased goods from Mangilal Shamlani on 30/4/1991 ran counter to the assertion of the complainant that the transaction underlying the cheque were of 22/4/1991 and 25/4/1991.

6. It is further seen from the impugned judgment and order that the learned Magistrate has also found that the appellant could not produce any satisfactory evidence about supply of goods in question on 22/4/1991 and 25/4/1991 to respondent No.1 except for the letter at Exh.S-2. But, the evidence of letter vide

Exh.S-2 was not found by the learned Magistrate as presenting a convincing case of the appellant regarding actual supply of the goods by him to respondent No.1 as it was the specific case of the appellant that the goods were first purchased by him from Mangilal Vyas and Mangilal Shamlani and then supplied to respondent No.1 and that it was not the case of the appellant that he also had some stock of goods allegedly sold by him to the complainant and that there was no reliable evidence available on record showing that the goods were indeed purchased by the appellant on or before 22/4/1991 and 25/4/1991.

7. The learned Magistrate has further found that the cheque in question bearing No.886919 was from the cheque book consisting of leaves bearing Nos. 886901 to 886925. The learned Magistrate on closely examining the office copies of the cheque leaves in the cheque book, marked as Exh.D-7 collectively, concluded that cheque numbers from 886901 to 886905, 886908 to 886914 and 886923 to 88695 were used between the periods from 28/5/1990 to 30/8/1990. The date of the cheque in question bearing No. 886919 was of 25/4/1991, which date was not in continuation of or sequentially consistent with the dates between 28/5/1990 and 30/5/1990. Therefore, learned Magistrate found that there was no reason as to why respondent No.1 should keep with him cheque No.886919 for giving it to the

appellant on 25/4/1991 when the full cheque book was used till 30/8/1990. The learned Magistrate also noted that it was not the case of the appellant that respondent No.1 had given him a post dated cheque.

8. All the above referred circumstances, highlighted in the impugned judgment and order, do appear in the evidence available on record and, therefore, the conclusion drawn from these circumstances by the learned Magistrate that the case of the appellant that cheque in question was given to him by respondent No.1 for discharge of a debt or liablity owed to him by respondent No.1 is not proved beyond reasonable doubt and that the defence of respondent No.1 that blank cheques were signed by him and handed over to the appellant as a part of business transactions, one of which was later on misused by the appellant, was probablised, cannot be said to be erroneous or perverse or not based upon the evidence available on record. Therefore, I find that no case is made out by the appellant for making any interference with the impugned judgment and order. The appeal, therefore, deserves to be dismissed.

The appeal stands dismissed.

S. B. SHUKRE, J.