

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

**CRIMINAL REVISION APPLICATION NO.300 OF 2014**

Mr. Sanjay Chopra

...Applicant

Versus

The State of Maharashtra & Anr.

...Respondents

.....

Mr. Abad H.H. Ponda i/b. Mr. Apoorv Singh for the Applicant.

Mr. Shaikh Z.H. for Respondent No.2

Mr. J.H. Ramugade for Respondent No.1- State.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.**

**DATE : 10<sup>th</sup> SEPTEMBER, 2015.**

**P. C. :**

The Applicant herein is an accused in C.C. No.209/SS/2006 filed by Respondent No.2 before the Court of Metropolitan Magistrate, 6<sup>th</sup> Court, Mazgaon, Mumbai, under section 138 of the Negotiable Instruments Act.

2. The case of Respondent No.2-complainant was that he is a cloth merchant and had sold and supplied goods to the Applicant -accused as per his order. The five cheques for total amount of Rs.10,00,000/- issued by the Applicant-accused towards the price of goods supplied were dishonoured for insufficient funds. Statutory

notice was issued demanding payment and since the cheque amount was not paid, the Respondent No.2 initiated proceedings under section 138 of the Negotiable Instruments Act.

3. Having served with the summons the Applicant -accused appeared before the learned Magistrate and pleaded not guilty. The Applicant-accused therefore came to be tried for offence under section 138 of the Negotiable Instruments Act. The Respondent- complainant examined himself. The statement of the Applicant-accused came to be recorded under section 313 of Criminal Procedure Code. The Applicant-accused also examined himself. Upon considering the evidence adduced by the respondent - complainant as well as the applicant - accused, the learned Magistrate by judgment dated 20<sup>th</sup> February, 2013 held the Applicant guilty under section 138 of the Negotiable Instruments Act and sentenced him to undergo simple imprisonment for four months and to pay compensation of Rs.10,00,000/- with the interest @ 9% p.a. from 6<sup>th</sup> March, 2006 till actual realization. Said compensation was ordered to be paid within a period of two months failing which the Applicant- accused was to undergo simple imprisonment for a period of five months.

4. The Applicant – accused challenged the said order in

criminal appeal No.62 of 2013. The learned Ad-hoc Additional Sessions Judge, Greater Bombay, dismissed the said appeal by judgment dated 11<sup>th</sup> April, 2014 and thus, confirmed the conviction and sentence imposed by the learned Magistrate. Being aggrieved by the same, the Applicant-accused has preferred this revision application.

5. Advancing the arguments on behalf of the Applicant-accused, the learned counsel Mr. Ponda submitted that the learned Sessions Judge has decided the appeal in the absence of the parties without going into the merits of the case. Learned counsel for the accused has further submitted that the appellate court has passed a cryptic judgment without appreciating the evidence adduced by the complainant and the accused and without considering the grounds raised by the Applicant-accused in the appeal memo. He has further submitted that the Appellate court has passed the order mechanically without application of judicial mind and on this ground alone the impugned order deserves to be set aside. He has relied upon the judgment of the Apex Court in the case of **Md. Ali @ Guddu V/s. State of U.P in Criminal Appeal No.425 of 2015** and has stated that in the lights of the principle laid down by the Apex Court in the said judgment, this is a fit case for remand.

6. The learned counsel for Respondent No.1 submits that complaint was filed in the year 2006 in respect of dishonour of cheque for an amount of Rs.10,00,000/- and that till date the Applicant-accused has deposited only an amount of Rs.3,00,000/- . The learned counsel for the Respondent No.2 has further submitted that the appeal was filed in the year 2013 and that the Applicant-accused has not shown any sufficient reasons for his absence on the date of the hearing.

7. It may be mentioned that while dealing with the powers of the appellate court, the Apex Court in the case of **Md. Ali @ Guddu V/s. State of U.P in Criminal Appeal No.425 of 2015** has reiterated the principles laid down in **Kamlesh Prabhudas Tanna V/s. State of Gujarat (2013) 15 SCC 263** as under :

“2....It is the duty of an appellate court to look into the evidence adduced in the case and arrive at an independent conclusion as to whether the said evidence can be relied upon or not and even if it can be relied upon, then whether the prosecution can be said to have been proved beyond reasonable doubt on the said evidence. The credibility of a witness has to be adjudged by the appellate court in drawing inference from proved and admitted facts. It must be remembered that the appellate court, like the trial court, has to be satisfied affirmatively that the prosecution case is substantially true and the guilt of the accused has been proved beyond all reasonable doubt as the presumption of innocence with which the accused starts, continues right through until he is held guilty by the final Court of

Appeal and that presumption is neither strengthened by an acquittal nor weakened by a conviction in the trial court.”

8. Similarly in the case of State of M.P. Vs. Madanlal (Criminal Appeal No.231 of 2015) the Apex Court has held as under :

“13. Recently, in K. Anbazhagan v. State of Karnataka and Others, a three-Judge Bench addressing the manner of exercise of jurisdiction by the appellate court while deciding an appeal has ruled that:-

“The appellate court has a duty to make a complete and comprehensive appreciation of all vital features of the case. The evidence brought on record in entirety has to be scrutinized with care and caution. It is the duty of the Judge to see that justice is appropriately administered, for that is the paramount consideration of a Judge. The said responsibility cannot be abdicated or abandoned or ostracized, even remotely, solely because there might not have been proper assistance by the counsel appearing for the parties. The appellate court is required to weigh the materials, ascribe concrete reasons and the filament of reasoning must logically flow from the requisite analysis of the material on record. The approach cannot be cryptic. It cannot be perverse. The duty of the Judge is to consider the evidence objectively and dispassionately. The reasonings in appeal are to be well deliberated. They are to be resolutely expressed. An objective judgment of the evidence reflects the greatness of mind – sans passion and sans prejudice. The reflective attitude of the Judge must be demonstrable from the judgment itself. A judge must avoid all kind of weakness and vacillation. That is the sole test. That is the litmus test.”

9. In the instant case, undisputedly the appeal was decided in the absence of the respective parties and their counsels. The reasons of

dismissal are recorded in para 6 of the impugned judgment as under:

“ I have gone through the R & P and had found the evidence/ affidavit Ex.P-3, invoice Exhs. P-4 and P-5, cheques Exhs. P-6 to P-10 and bank memos Exh.s P-11 to P-20 showing that the cheques are dishonoured for reason “funds insufficient” and the relevant receipts of the bank at Exhs. P-21 to P-30, postal acknowledgment cards Exhs. P-36 to P-45, postal receipts Exhs. P-46 to P-55 and in statement U/s. 313 of Cr.P.C. at Exh. 55A, the accused/appellant has admitted the signatures on the involved cheques given to the complainant and he has also admitted the receipt of demand notice, but further the accused could not rebut the presumption U/s.139 of N.I. Act which is in favour of the complainant and against accused/appellant. Merely saying that he had issued blank cheques could not substantiate the defence and after considering the evidence as a whole and the impugned judgment and orders, I do not find any error, illegality and therefore also do not require any interference in the impugned judgment and orders which is well-reasoned.”

10. A perusal of paragraph 6 of the impugned judgment reveals that the learned Ad-hoc Additional Sessions Judge has not referred to and discussed the evidence adduced by the complainant /Respondent and the Applicant -accused during the trial. The judgment is cryptic and the learned Ad-hoc Additional Sessions Judge has not arrived at independent conclusion as to whether the evidence adduced by the complainant was sufficient to hold the Applicant-accused guilty of the offence punishable under section 138 of the Negotiable Instruments Act and /or whether the evidence elucidated in the cross examination as

well as the evidence adduced by the accused was sufficient to rebut the presumption under sections 118 and 139 of the Negotiable Instruments Act. The learned Ad-hoc Additional Sessions Judge has not considered the grounds raised by the Applicant-accused in the appeal memo and has not ascribed any reasons for sustaining the conviction. The impugned judgment reflects total non application of mind and is not in accordance with law and hence, cannot be sustained. Under the circumstances there is no other option but to set aside the same and remit the matter to the Sessions Court for fresh consideration of the appeal.

11. In view of the discussion supra the revision application is allowed. The impugned judgment dated 11<sup>th</sup> April, 2014 in Criminal Appeal No.62 of 2013 is set aside. The appeal is remanded to the Sessions Court for fresh hearing as expeditiously as possible and in any event within a period of three months from the date of receipt of this order. The learned Metropolitan Magistrate, 6<sup>th</sup> Court, Mazgaon Mumbai to forward record and proceedings of the said case No.C.C. No.209/SS/2006 to the Sessions Court, Greater Bombay as expeditiously as possible.

12. At this stage the learned counsel for the Applicant-accused,

upon instructions submits that the Applicant-accused, without prejudice to his rights and contention, is ready to deposit a sum of Rs.2,00,000/- before the Sessions Court, Greater Mumbai, within a period of eight weeks from today. Statement accepted.

**(ANUJA PRABHUDESSAI, J.)**

**CERTIFICATE**

Certified to be true and correct copy of the original signed  
Judgment /order.