

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

CRIMINAL APPLICATION NO. 419 OF 2015

Mr. Vipul Arun Vora

.. Applicant

v/s.

Harikar Prasad Munnu Tiwari

& Anr.

..Respondents

Mr. H.S.Suryavanshi for the Applicant.

None for the Respondent.

Mr. Rajesh More, APP for the State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : SEPTEMBER 15, 2015.

P.C.

1. The applicant herein is the complainant in C.C.No. 4300505/SS/2009 filed under Section 138 of the Negotiable Instruments Act. The complaint was dismissed mainly on the ground that there was no service of statutory notice on the respondent no.1 accused.

2. I have heard the learned Counsel for the applicant and perused the notes of evidence placed on record along with the documents

exhibited before the trial court. I have also perused impugned judgment.

3. It is seen that the complainant herein had issued statutory notice to the respondent no.1 at the address “Gandhi Chawl No.1, Room No.20, Opp. Ashoke Industries, Bhabarekar Nagar, Charkop, Kandivali (W), Mumbai 400 067”. The said notice was returned unserved with an endorsement “Unclaimed”. The learned Magistrate has held that the notice was not despatched at the correct address. In this regard the learned Magistrate has held that the address stated in the passbook at Exhibit P-12 shows that the respondent no.1 accused was residing at room No.407 New Bhavrekar Nagar, Malvani No.8, Malad, Mumbai 85. The learned Magistrate has also observed that the address of the accused was mentioned in the complaint as “Ganesh Chawl No.1, Room No.20, Near Ashoka Industries, Bhabarekar Nagar, Kandivali (West), Mumbai 400 067. The summons issued to the accused on the said address were returned unserved and subsequently as per the application filed by the applicant complainant the summons was served on the respondent

no.1 accused at the office address.

4. It is therefore evident that the applicant-complainant, has not proved that he had despatched the notice on the correct address and hence the learned Magistrate was justified in not drawing presumption under Section 27 of General Clauses Act. I do not find any illegality or perversity in the said finding.

5. Furthermore, the learned Magistrate has also held that the applicant-complainant herein has failed to prove that the cheque number 135146 for Rs.17,52,000/- was issued in discharge of the legally enforceable debt or liability. The learned Magistrate has held that the applicant-complainant was having good relation with the accused and that there was money transaction between them. It is further stated that the endorsement in the passbook reveals that after the deposit of salary in his account, respondent-no.1 accused used to issue cheque in favour of the complainant, which probabalises the defence of the respondent no.1 accused that he used to take cash from the complainant and used to issue him cheque for the said amount.

6. Having gone through the entire notes of evidence, in my view the finding rendered by the learned Magistrate are probable and justifiable. Hence, the learned Magistrate was justified in dismissing the complaint and acquitting the accused. There is no illegality or perversity in the order.

7. Hence, the application is dismissed. Leave is rejected.

(ANUJA PRABHUDESSAI, J.)

CERTIFICATE

Certified to be true and correct as per the original signed judgment/order.