

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL REVISION NO.108/2012

M/s. Maheshkumar Narayandas Batra and another ..vs.. Mahesh Narayandas
Parwani and another

AND

CRIMINAL REVISION NO.109/2012

M/s. Maheshkumar Narayandas Batra and another ..vs.. Mahesh Narayandas
Parwani and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. A. H. Lohiya, Advocate for applicants.
Mr. M. S. Vakil, Advocate for non applicant no.1

CORAM : A.B. CHAUDHARI, J.

DATE : JULY 6, 2015.

Both these revision applications are being
disposed of by this common order.

The accused-revision applicant has
challenged the judgments and orders recorded by the
trial Judge as well as appellate Court by which the
applicant-accused was found liable to pay amounts of
cheque in both these cases in the sum of Rs.40,000/-
and Rs.50,000/- respectively and an order was made for
making payment of compensation.

The learned revision applicant in both these
applications vehemently argued that the applicant had
not examined any witness on oath. The courts below
committed error in not believing the defence theory that
the blank cheques were given in the routine transactions
between the parties which were misutilised by the

complainant. That the courts below committed error in pushing the burden of proof on the appellant-accused about the proof of legally enforceable liability and the lower appellate court committed error in recording a finding that no reply to the notice under Section 138 of the Negotiable Instruments Act was at all given by the applicant-accused which is contrary to the finding recorded by the trial Judge.

Per contra, Mr. Vakil, learned counsel for the non applicant-complainant, supported the impugned judgment and orders and submitted that the concurrent finding of fact recorded by two courts is based on evidence and, therefore, prayed for dismissal of revision.

Upon hearing learned counsel for the rival parties and upon perusal of the evidence and the reasons recorded by the trial Judge as well as appellate Court, I find that the finding of facts recorded by both the courts are based on evidence and on preponderance of probabilities. The courts below have found that though the applicant had given reply notice, he did not mention therein about the defence namely; the cheques were issued towards the premium etc. The courts below have further found that it was impossible to believe that the applicant would issue blank cheques with his signature thereon. I find that the inference drawn by the courts below upon evidence cannot be said to be perverse and consequently findings of facts recorded by

them also are inconsistent with the evidence and pleadings on record. Insofar as the defence evidence of the applicant-accused is concerned, he did not have any explanation as to why he did not take immediate action by producing or issuing another notice if really he had any presumption about the alleged blank cheque being misutilised. At any rate, both complainant as well as accused being in the business, it cannot be believed that the accused-applicant issued the cheque without there being any legally enforceable liability.

To sum up, the concurrent finding of fact need not be interfered with in the revisional jurisdiction of this court as there is no perversity. Hence, I pass the following order.

ORDER

(i) Criminal Revision Nos.108/2012 and 109/2012 are dismissed.

JUDGE