

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 599 OF 2003

Vaishnav Nagari Sahakari
Patsanstha Ltd.,
Jalgaon, 24 Visanji Nagar,
Jalgaon, Through Kamlesh Narendra Ved,
Age : 34 years, Occu.: Business,
Jalgaon, Tq. & District Jalgaon .. Appellant

VERSUS

Bhausahab Dadaji Deore,
Age : Major, Occu.: Trader,
R/o 37, Shiv Colony,
Deore Constructions, Jalgaon,
Tal. & District Jalgaon .. Respondent

Mr. B.R. Warma, Advocate for the appellant
Mr. V.B. Jadhav, Advocate h/f Mr. A.V. Hon, Advocate for the
respondent

CORAM : M.T. JOSHI, J.
DATE : 03/02/2016

ORAL JUDGMENT :

Heard both sides.

2. Aggrieved by the acquittal of the respondent from the offence punishable under section 138 of the Negotiable Instruments Act by the IInd Jt. Judicial Magistrate First Class, Jalgaon vide judgment and order dated 02/08/2003 passed in R.C.C. No. 10 of 2003, the original complainant has filed the present appeal.

3. The case of the complainant is that it had advanced loan to the respondent and towards the repayment of the said loan, the respondent had issued the cheque in question on 28/11/2002 for a sum of Rs.6,23,633/-. The cheque however was dishonoured by the banker of the respondent, as the respondent has stopped the payment. Therefore, upon issuing notice and receiving the reply, the complaint came to be filed.

4. The defence of the respondent was that he had obtained loan from the complainant earlier in the year 1998 and had passed two blank signed cheques. The loan was repaid, however, none of the cheque was returned. Thereafter, again he obtained the loan in the year 1999 and again passed two blank cheques with signatures. The loan was cleared by one cheque, however, the cheques were not returned. This defence was fortified by the complainant's witness – Ranjit Ved, who has admitted all the correspondence including the letter from the respondent that he made an enquiry regarding the outstanding amount vide letter dated 24/10/2002.

. In the circumstances, the trial Court came to

the conclusion that when the respondent was not aware of the outstanding amount as per the statement, it would be inconceivable that he would issue the cheque on 28/11/2002 even though there was no communication as to how much amount was due/outstanding against him.

5. The learned trial Court also took into consideration the serial numbers of the cheques issued from the same cheque book in the year 1999. The same cheque book was used while issuing the cheques.

6. The reasoning forwarded by the learned Joint Judicial Magistrate First Class, Jalgaon is based on the material placed before him. A reasonable and probable view of the material on record is taken by the learned J.M.F.C.

7. In the circumstances, Criminal Appeal is hereby dismissed.

[M.T. JOSHI]
JUDGE

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