

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 383 OF 2003

Pravin Raghunath Gaikwad
Age 31 years, Occu.: Tailoring,
R/o Nawapur, Tq. Nawapur,
Dist. Nandurbar .. Applicant

Vs.

- 1] The State of Maharashtra
- 2] Sudhir S/o Daulatrao Patil
Age : 39 years, Occu.: Medical
Practitioner, R/o Nawapur,
Tq. Nawapur, Dist. Nandurbar
(Respondent no.2-**Orig. Complainant**) .. Respondents

Mr. M.G. Kochar, Advocate for the applicant
Mr. S.D. Ghayal, A.P.P. for the respondent/State
Mr. D.S. Pawar, Advocate h/f Mr. K.C. Sant, Advocate for
respondent no.2

CORAM : N.W. SAMBRE, J.

DATE : 20/06/2016

ORAL ORDER :

Heard Mr. M.G. Kochar, learned counsel for the
applicant, learned A.P.P. and Mr. Pawar, learned learned
instructed by Mr. K.C. Sant, learned counsel for
respondent no.2.

2. At the outset, Shri Kochar, learned counsel for

the applicant fairly submits that the accused suffered conviction for the offence punishable under section 138 of the Negotiable Instruments Act and was sentenced to suffer simple imprisonment for a period of six months by the learned Judicial Magistrate First Class, Nawapur vide judgment and order dated 1/2/2002 passed in Criminal Case No. 67 of 2000, which is confirmed in the Appeal against conviction by the learned Adhoc Additional Sessions Judge, Nandurbar, vide judgment and order dated 29/11/2003 passed in Criminal Appeal No. 1 of 2002. The accused has already undergone the sentences. According to him, the conviction of the applicant is not sustainable on two grounds. Firstly, it is submitted that the notice under section 138 of the Negotiable Instruments Act was not served on the applicant at his address at Nawapur. According to him, the registered post acknowledgment, as is produced at Exhibit 20, which bears his signature differs from his original signature and as such he has denied Exhibit 20.

3. Apart from above, learned counsel for the applicant would urge that out of the total three cheques, two cheques were already honoured and there is

no reason why the third cheque will not be honoured by the present applicant.

4. Mr. Pawar h/f. Mr. Sant, learned counsel for respondent no.2 submits that both the Courts below have concurrently recorded findings of facts based on the cogent evidence as regards guilt of the accused. According to him, there is hardly any material on record to infer that the notice under section 138 of the Negotiable Instruments Act was not served on the applicant. He therefore prays for dismissal of the application.

5. From the record, it depicts that the cheque was returned to the complainant on 17/4/2000 by the banker and he has issued notice on April 29, 2000 by registered post A.D., of which acknowledgment is at Exhibit 20. The said acknowledgment depicts that on May 9, 2000, the present applicant has received the notice by putting his signature. As such, the learned Magistrate has recorded a finding that notice under section 138 of the Negotiable Instruments Act was served on the present applicant. The appellate Court confirmed the finding on

the said issue by recording that the burden was not discharged by the applicant as the service of notice was very much established and proved by the complainant.

6. In my opinion, the finding, as is recorded, does not call for any interference qua the service of notice, as the complainant has already established that notice under section 138 of the Negotiable Instruments Act was served on the present applicant. Once it is established that the notice was served, the burden shifts on the present applicant to prove that the notice was not served upon him and but for comparing his signature on the acknowledgment with that on his Vakilpatra, there is hardly any material on record to discharge his burden of proving that the notice was not served upon him. No independent witness was examined by the applicant in support thereof. As such, the findings, as are recorded appear to be just and proper and in accordance with the record.

7. So far as the next limb of submission of learned counsel for the applicant of honouring of two cheques out of three cheques is concerned, it is

required to be noted that the said submission speaks of transaction between the applicant and the complainant. There is no evidence to infer that the cheque was not issued by the applicant to the complainant for a barred debt.

8. No case for interference in the above background is made out. Criminal Revision Application as such fails and is rejected.

[N.W. SAMBRE]
JUDGE

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