

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Criminal Revision Application No. 197 of 2015

District : Latur

Shivaji s/o. Nagorao Murkikar,
Age : 37 years,
Occupation : Agriculture,
R/o. Mukramabad,
Taluka Mukhed,
District Nanded.

.. Applicant
(Original complainant)

versus

1. Suresh s/o. Ganpatrao Bothikar,
Age : 62 years,
Occupation : Business,
R/o. Rani Laxmibai Road,
near Chaubara, Udgir,
Taluka Udgir,
District Latur.

2. The State of Maharashtra,
Through Police Inspector,
Udgir Police Station,
Taluka Udgir,
District Latur.

.. Non-applicants
(No.1 - Original
accused)

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*Mr. Amol G. Vasmatkar, Advocate, holding for
Mr. M.G. Biradar, Advocate, for the applicant.*

*Mr. R.B. Deshmukh, Advocate, for the
non-applicant no.1.*

*Mr. P.N. Kutti, Addl. Public Prosecutor, for the
non-applicant no.2.*

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CORAM : Z.A. HAQ, J.

DATE : 25TH NOVEMBER 2016

ORAL ORDER:

Heard Adv. Mr. A.G. Vasmatkar holding for Adv. Mr. M.G. Biradar for the applicant, Adv. Mr. R.B. Deshmukh for the non-applicant no.1 and APP Mr. P.N. Kutti for the non-applicant no.2 - State of Maharashtra.

02. Rule. Rule made returnable forthwith.

03. The applicant - original complainant has challenged the judgment passed by the Sessions Court by which the appeal filed by the non-applicant no.01 - accused is allowed, and the judgment passed by the learned Magistrate convicting the non-applicant no.01 for offence punishable under Section 138 of the Negotiable Instruments Act, 1881, is set aside.

04. The applicant filed complaint under Section 138 of the Negotiable Instruments Act, 1881, contending that the non-applicant no.01 had issued cheque for Rs. 1,00,000/- in favour of the complainant in discharge of legal debt and when the cheque was presented, it was dishonoured and after issuance of notice as the accused failed to pay the amount, the complaint was filed.

05. The learned Magistrate conducted the trial and found that the accused was guilty of commission of offence under Section 138 of the Negotiable Instruments Act, 1881, and convicted him to undergo simple imprisonment for one year and to pay fine of Rs. 1,50,000/- and in default of payment of fine, to undergo further simple imprisonment for 03 months. The learned Magistrate directed that out of amount of fine deposited by the accused, Rs. 1,25,000/- be given to the complainant as compensation and balance amount of Rs. 25,000/- be credited in the account of State Government.

06. The applicant being aggrieved by the judgment passed by the Magistrate, filed appeal before Sessions Court, which is allowed. The learned Addl. Sessions Judge has recorded a finding that the complainant failed to establish that he had given financial assistance to the accused and that the cheque was given by the accused to the complainant to discharge legal debt.

07. The learned Advocate for the applicant has submitted that the conclusions of learned Addl. Sessions Judge are unsustainable as the statutory presumption under Section 139 of the Negotiable Instruments Act, 1881, is overlooked. It is submitted that the learned Magistrate considered the

evidence on record properly and recorded finding of fact that the cheque was given by the accused to the complainant for discharging legal debt and that finding could not have been set aside by the Sessions Court as the finding was based on proper appreciation of evidence on record and could not have been said to be perverse.

08. The learned Advocate for the non-applicant no.01 - accused has submitted that the learned Addl. Sessions Judge has properly appreciated the evidence on record and the conclusions recorded by him that the complainant failed to establish that cheque was given for discharge of legal debt, cannot be faulted with. To support the submission, reliance is placed on the judgment given in the case of **Karad Urban Co-operative Bank Limited Vs. Sunil Laxman Dalvi & others**, reported in **2015 Legal Eagle(Bom) 916**.

09. With the assistance of the learned Advocates for the respective parties, I have examined the documents placed on the record of the Revision Application. I find that the learned Magistrate considered all the relevant aspects in paragraph No.15 of the judgment and rightly recorded that the accused had given the cheque for discharging legal debt. The learned Addl. Sessions Judge has committed an error by re-appreciating the evidence and recording finding to the contrary without pointing

out an infirmity or perversity in the finding recorded by the learned Magistrate. The judgment relied upon on behalf of the non-applicant no.01 - accused does not assist him as the facts of the present case are different from the facts of the case in which that judgment is given.

In my view, for the above reasons, the impugned judgment is unsustainable and is required to be set aside.

10. Hence, the following order :-

(a) The judgment passed by the learned Addl. Sessions Judge in Criminal Appeal No. 13/2006 on 24th September 2015 is set aside.

(b) The judgment passed by the Judicial Magistrate (F.C.), Udgir, in S.T.C. No. 07/2005 on 15th June 2006 is restored.

(c) The Criminal Revision Application is allowed with costs quantified at Rs. 10,000/- [Rupees ten thousand] to be paid by the non-applicant no.01 - accused to the applicant - original complainant within one month.

(d) Rule made absolute in the above terms.

11. At this stage, Mr. R.B. Deshmukh, learned Advocate for the non-applicant no.01, requests that this judgment be kept in abeyance for two months to enable the non-applicant no.01 to take appropriate steps in the matter.

Considering the facts of the case, the request made on behalf of the non-applicant no.01 - accused is rejected.

(Z.A. HAQ)
JUDGE

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