

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.193 OF 2015

SRIKANT SRIMANDHAR MIRAJE)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA & ANR.)...RESPONDENTS

Shri Datta Pawar i/b. M/s.Onash Legus, Advocate for the Appellant.

Smt.PPBhosale, APP for the Respondent - State.

CORAM : ABHAY M. THIPSAY, J.

DATE : 1st FEBRUARY 2016.

ORAL JUDGMENT :

1 The appellant is the original complainant. He had filed a complaint against the respondent no.2 herein, alleging commission of an offence punishable under Section 138 of the Negotiable Instruments Act. The Judicial Magistrate First Class, Kolhapur, after holding a trial, acquitted the respondent no.2. Being aggrieved thereby, the appellant, after obtaining special leave of this court, has filed the present appeal.

2 The counsel for the respondent no.2 remained absent, inspite of the service of the notice upon the respondent no.2, when the appeal came up for final hearing. The matter appeared on board on 15th January 2016, when it was adjourned till today, with a direction to the learned counsel for the appellant to give a notice to the counsel for respondent no.2. Accordingly, such a notice has been given and the affidavit of service filed by the learned counsel is taken on record.

3 Under these circumstances, I am not inclined to defer the final hearing of the appeal any further, merely because the counsel for respondent no.2 is not present. This is particularly so, because, I am informed that the appellant is of 93 years.

4 For the sake of convenience and clarity, the appellant shall hereinafter be referred to as 'the complainant' and the respondent no.2 as 'the accused.'

5 On perusal of the impugned judgment of acquittal, it is clear that the accused was acquitted only because the complainant had failed to prove that the cheque in question was presented to the bank for payment within the time stipulated by Clause(a) of the proviso to Section 138. This is evident from the point for determination framed by the learned Magistrate. The point no.1 for determination, as framed by the Magistrate, was '*whether the complainant proved that the cheque in question had been issued towards the discharge of the hand loan amount,*' which was answered in the affirmative.

6 It is seen that the cheque was drawn on Karad Urban Co-operative Bank Limited with which the accused had maintained an account. It was deposited by the complainant in his bank, viz., Ratnakar Bank Limited. The validity period of the cheque was till 20th November 2005. The Magistrate, therefore, observed rightly, that the cheque in question, therefore, should have been presented to the drawee bank on or before 20th November 2005.

7 The complainant produced before the trial court, a memo issued by his bank i.e. Ratnakar Bank Limited, regarding the dishonour of the cheque. It was dated 21st November 2005. The Magistrate observed that the memo regarding dishonour of the cheque issued by the drawee bank i.e. Karad Urban Co-operative Bank had not been produced. The Magistrate, therefore, observed that there was nothing to show that the cheque in question had been presented to the Karad Urban Co-operative Bank on or before 20th November 2005. It is for this reason that he passed an order of acquittal.

8 The learned counsel for the complainant submitted that actually the cheque had been presented to the drawee bank before 20th November 2005. According to him, he has subsequently obtained the documents showing that it was presented to the drawee bank on 14th November 2005. He submitted that since the complainant did not have this evidence in his possession at the time when the trial was held, the complainant now be given an opportunity to adduce this

evidence, which has a direct bearing on the order of acquittal, as passed by the learned Magistrate.

9 In the circumstances, I think it just and proper that the complainant should be given an opportunity to establish that the cheque had been presented to the drawee bank within the period stipulated by law. Depriving the complainant of an opportunity to establish this, would not be in the interest of justice.

10 The appeal is partly allowed.

11 The order of acquittal, as passed by the learned Magistrate, is set aside.

12 The matter is remanded back to the learned Magistrate for proceeding further with the trial, by giving an opportunity to the complainant to adduce evidence to show as to on which date the cheque in question had been presented to the drawee bank.

13 Needless to say, that the learned Magistrate shall also give an opportunity to the accused to cross-examine the relevant witness/s in respect of the newly adduced evidence and also to adduce his own evidence in rebuttal, if so desired.

14 After giving such opportunity to the parties to adduce evidence, the learned Magistrate shall decide the matter afresh and in accordance with law.

15 The appeal is disposed of in the aforesaid terms.

16 Considering the age of the appellant, the learned Magistrate shall make endeavour to decide the matter afresh within a period of three months from the receipt of this order.

(ABHAY M. THIPSAY, J.)