

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 375 OF 1999

Sou. Pushpa Babasaheb Salve	... Appellant.
Versus	
Sou. Rita Baburao Cannot & Anr.	... Respondents.

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Mr.Satyavrat Joshi, Advocate appointed by this Court for the Appellant.
None for Respondent No.1.

Mrs.G.P.Mulekar, A.P.P. for Respondent No.2-State.

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CORAM : S.B. SHUKRE, J.

DATED : 15TH JUNE, 2016.

P.C. :

1] This is an appeal preferred against the judgment and order dated 2nd April, 1998 rendered in Criminal Case No.404 of 1995 by learned Judicial Magistrate First Class, Court No.8, Pune, thereby acquitting the respondent of the offence punishable under Section 138 of the Negotiable Instrument Act.

2] The respondent was prosecuted for the said offence on the allegation that two cheques issued by her to the appellant for the

sums of Rs.30,000/- and Rs.50,000/- towards part satisfaction of the debt owed by the respondent to the appellant were dishonored for want of funds and even after receipt of the demand notice, the respondent did not pay the amount of cheques to the appellant.

3] I have heard learned Counsel appointed by this Court to assist the Court on behalf of the appellant/complainant. Nobody is present on behalf of the respondent No.1. I have heard learned A.P.P. for respondent No.2-State. I have carefully gone through the record of the case so also the impugned judgment and order.

4] It is the contention of learned Counsel appointed for the appellant is that the impugned judgment and order does not show analysis of the evidence of the complainant in its proper perspective. He submitted that when the learned Judicial Magistrate found that the cheques were dishonored in this case, there was no reason for the learned Magistrate to hold that the cheques in question were not issued by the respondent No.1 in discharge of legally enforceable debt or liability. He submitted that the issuance of the cheque towards

satisfaction of legally enforceable debt could be easily seen from the mere fact that the cheques were issued by the respondent No.1 and the legal presumption existing in this regard in favour of the payee that is the appellant, has not been discharged in any manner by respondent No.1, the drawer of the cheque.

5] Learned A.P.P. submitted that appropriate order may be passed in this case.

6] On going through the evidence available on record and the impugned judgment and order, I find it difficult to express my agreement with the submissions canvassed across bar by the learned Counsel for the appellant. It is seen from the record that in pursuance of the defence taken by respondent No.1 that she had never issued the cheques towards discharge of any legal liability, CW1-Pushpa, the complainant was extensively cross examined by her Counsel and in this effort, it is further seen, CW1-Pushpa, has indeed given some admissions which create a doubt about her having paid an amount of Rs.1,50,000/- to respondent No.1 as a consideration for the purchase

of One Acre of land from respondent No.1. CW1-Pushpa, has submitted that respondent No.1 had issued receipts to her acknowledging payment by her to respondent No.1 an amount of Rs.1,50,000/- as a consideration for respondent No.1 agreeing to sell the One Acre of land to the former. But the complainant did not produce those receipts in evidence. The complainant i.e. CW1-Pushpa also did not disclose the survey number from which respondent No.1 agreed to sell One Acre of land to her. It is also seen that CW1-Pushpa could not produce any reliable material to support her contention that she had mobilized an amount of Rs.1,50,000/- from various sources, such as credit account of her husband, borrowing of some amount by way of loan by her husband e.t.c. so as to enable her to pay such a huge amount in cash to respondent No.1. Considering such nature of evidence, the learned Magistrate took a view that there was real doubt about raising of the funds by CW1-Pushpa. The learned Magistrate also found that no prudent person would agree to pay such a huge amount in cash without obtaining any receipt for the same. As said earlier, it has been the contention of the appellant that two cheques amounting to Rs.80,000/- in total allegedly issued by

respondent No.1 were towards discharge of part of the liability of Rs.1,50,000/- incurred by respondent No.1 from the appellant in the course of their striking an agreement regarding selling by respondent No.1 One Acre of land and its purchasing by the appellant. But, basically the appellant could not prove beyond reasonable doubt incurring of any liability by respondent No.1 and therefore, the learned Magistrate recorded a finding that the essential ingredient of the offence punishable under Section 138 of the Negotiable Instrument Act has not been proved beyond reasonable doubt.

7] In fact, by the admissions given by CW1-Pushpa, the defence taken by respondent No.1 has been probalilized and the burden of proof that the cheques were issued towards discharge of a legally enforceable debt shifted to the appellant has not been discharged by her. The view so taken by the learned Magistrate is plausible. There is no scope for making any interference with the impugned judgment and order. The appeal deserves to be dismissed. Before passing the final order, however, this Court places on record it's appreciation for the valuable assistance rendered to this Court by

the learned Counsel appointed for the appellant in deciding this appeal. In the circumstances, following order is passed;

ORDER

- i) The appeal stands dismissed.
- ii) The copies of this order be forwarded to the appellant and respondent No.1 at the States expense.
- iii) The legal remuneration payable to learned Counsel for the appellant is determined to be at Rs.5,000/- (Rs. Five Thousand Only), which may be paid from out of the funds available with the State Legal Services Authority, at his request, to “Kirtikar Law Library, Mumbai”.

(S.B. SHUKRE, J.)