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

CRIMINAL APPEAL NO. 482 OF 2000

Digambar G. Aradhye
Residing at Hut No.2, Room No.4,
Chembur Children's Home,
V.N. Purav Marg, Mankhurd
Mumbai – 400088. ...Appellant (Orig.Complainant)

Vs.

Ashok A. Khanchnalkar
Residing at C/o. Smt. Anusuya A. Khanchnalkar
M.D.C. Home, V.N. Purav Marg, Mankhurd
Mumbai-400 088. ...Respondent No.1 (Orig.Accused)

The State of Maharashtra ...Respondent No.2

Mr. Deepak Thakare, APP for the State Respondent No.2
None for the Appellant

**CORAM : MR. S.B. SHUKRE, J.
DATED : 14TH MARCH, 2016**

JUDGMENT:

1. This is an appeal preferred against the judgment and order dated 10th November, 1997 passed by the Metropolitan Magistrate, 12th Court, Bandra, Mumbai in a Criminal Case No.75/S/97, thereby acquitting the accused of the offence punishable under Section 420 of the Indian Penal Code.

Briefly stated, facts of the case are as under:

The complainant, Digambar Gopalrao Aradhye came to be introduced to the accused through the wife of the accused. In the year 1988, wife of the accused and the complainant were working in a Children's Home at Chembur. The complainant was interested in taking one room on rent at Koparkhairne at New Mumbai and he was promised by the accused that he would try to get for him one such room. It is alleged by the complainant that the accused asked for payment of Rs.8000/- initially in order to enable him to fetch a suitable room, which could be hired by the complainant. The amount of Rs.8000/- was paid by the complainant to the accused on 5th November, 1988 and thereafter, the complainant paid an amount of Rs.10,000/- more to the accused. The accused, however, did not fulfill his promise and did not make any arrangement for making available the room to be taken on rent by the complainant. One letter was issued to him by the complainant, but in vain. Several requests were made to the accused by the complainant in that

regard, which also were not looked into by the accused. Ultimately, the complainant filed a complaint case against the accused for initiating criminal case against him for an offence of cheating punishable under Section 420 of the Indian Penal Code.

A verification statement of the complainant was recorded. Upon finding that there were grounds to believe that the allegations made against the accused were genuine and indicated prima facie commission of the offence, the learned Magistrate framed charge against the accused for the offence punishable under Section 420 of the Indian Penal Code. The accused pleaded not guilty to the the same and came to be tried. Accordingly trial of the accused for an offence punishable under Section 420 of the Indian Penal Code proceeded in accordance with law. After considering the evidence available on record and arguments of both the sides, the learned Magistrate found that the complainant failed to prove the offence punishable under Section 420 of the Indian Penal Code and thus acquitted him of the same by

his judgment and order passed on 10th November, 1997. Not being satisfied with the same, the complainant / appellant has preferred the present appeal after seeking leave of the Court.

2. This is an old appeal filed in the year 2000 and is pending for final disposal for long period of time. The record shows that on the last occasion ie., 29th July, 2015 nobody was present on behalf of the appellant although learned Counsel for the respondent No.1 accused and the learned APP for the respondent No.2 state were present. The appeal was, therefore, adjourned to the next date ie. 12th August, 2015. It appears that on that date, this appeal did not come up for final hearing. Now, this appeal has been listed on board for final hearing for this day of 14th March, 2016. Today, again nobody is present on behalf of the appellant. Hearing of the appellant, as per the mandate of Section 386 of the Code of Criminal Procedure, would be necessary, if the appellant remains present. The appellant, however, inspite of being granted reasonable opportunity to present his case before this Court, has not remained present. Therefore, in view of the

provision of Section 386 of the Code of Criminal Procedure, and the fact that this appeal is very old, this Court has decided to proceed in the matter after hearing the Counsel or the parties who are present before the Court and also considering the record of the case.

3. None for the respondent No.1. Learned A.P.P for the respondent No.2 is present. I have heard him. I have gone through the record of the case including the impugned judgment and order. The learned APP for the respondent No.2 submits that an appropriate order be passed in the matter.

4. It is seen from the impugned judgment and order that the learned Magistrate has found this case to be a case of no evidence so far as concerned the material fact that the accused nurtured intention to cheat the complainant since the beginning of the transaction of payment of money by the complainant to the accused as a consideration for fetching one room on rent for the complainant. The learned

Magistrate has found that there was a doubt about the accused himself making the promise for getting a room for the complainant to be taken on rent as the wife of the accused, D.W. No.1 Smt. Anusuya in her evidence said that the amounts in question were received by one Gholap and Chaudhary. The learned Magistrate further found that although a letter was sent by the complainant to the accused on 9th November, 1989 after paying the 2nd installment of Rs.10,000/- by cheque calling upon the accused to perform his promise, and that there was no response to such a letter from the accused, the complainant chose to remain silent for a period of about two years and it was on 19th January, 1992 that a complaint came to be filed by him, for which no satisfactory explanation has been given by the complainant.

5. Upon going through the evidence of the prosecution witness P.W. No.1 Digambar (complainant) and also the defence evidence of D.W. No.1 Smt. Anusuya, I find that the conclusion so drawn by the learned Magistrate cannot be said to be perverse or arbitrary or representing an impossible view.

The evidence of P.W. No.1 Digambar does not establish the essential ingredient of the offence of cheating in the sense that no circumstances are appearing in his entire testimony from which one could infer that the accused made a false promise, which he knew to be false when he allegedly accepted the amount of Rs.8000/- paid to him by cheque from the complainant as a consideration for the accused arranging for one room for the complainant that was to be taken on rent. It appears that the room was to be actually arranged by Gholap and Chaudhary and some transaction also took place between the complainant and said two persons. If this was so, the learned Magistrate was right when he found that there was a doubt about the transaction taking place between the complainant and the accused, as alleged by the complainant and even if it was there, the intention to cheat right from inception of the transaction was not visible. That apart, no explanation for the delay occurred in filing of a criminal complaint against the accused has been given by the complainant. A cumulative effect of these facts and circumstances appearing on record would be that the

appellant failed to establish the guilt of the accused for an offence punishable under Section 420 of the Indian Penal Code, with which he has been charged in this case. No interference, therefore, is warranted in the impugned judgment and order.

6. The Appeal stands dismissed.

(S.B. SHUKRE, J.)