

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

CRIMINAL APPEAL NO. 306 OF 1998

Syed Sarfaraz Hussain

... **Appellant.**

Versus

Mr. Augustine Jacob & Anr.

... **Respondents.**

None for the Appellant.

Mr. R.M. Tiwari for the Respondent No.3.

CORAM : S.B. SHUKRE, J.

DATED : 13TH JUNE, 2016.

P.C. :

1] Heard the learned Counsel for the Respondents. None for the Appellant. The record shows that nobody has been remaining present on behalf of the Appellant on last several occasions. The Appeal is very old. The mandate of Section 386 of CrPC requires that the appeal be disposed of on merits, after hearing the Appellant, if he appears. Since the appeal is very old and nobody is appearing on behalf of the Appellant, this appeal is being disposed of by following mandate of Section 386 of CrPC.

2] This is an appeal preferred against the judgment and order passed on 5th November, 1997 in C.C.No.54/S/1989 by Additional Chief Metropolitan Magistrate, 4th Court, Girgaon, Mumbai.

3] By the impugned judgment, the learned Additional Chief Metropolitan Magistrate has found the Respondents, who are the original Accused Nos.1, 2 and 3 as not guilty of the offences punishable u/Sec.138 of the Negotiable Instruments Act and 420 read with Section 34 of Indian Penal Code and thus acquitted all the three Respondents of the said offences.

4] So far as offence punishable u/Sec.420 of IPC is concerned, it is an admitted position that no evidence has been led, whatsoever even to *prima facie* make out the offence punishable u/Sec.420 read with Section 34 of IPC and that is the reason why no charge was framed in that regard.

5] As far as offence punishable under Section 138 of Negotiable Instruments Act is concerned, the learned Magistrate has

found that the complaint was filed prematurely before expiry of the mandatory period of 15 days from the date of service of the demand notice and therefore in the opinion of the learned Magistrate, no cause of action as contemplated under Section 138 of the Negotiable Instruments Act arose in this case. The learned Magistrate has placed his reliance upon the view taken by Karnataka High Court in a case reported in 1997 Cri. L.J. 3691 and also the decision of Madras High Court as reported in 1997 Cri. L.J. 3692.

6] I do not find anything wrong or illegal about the said finding recorded by the Court below. The notice, appears to have been served upon one of the accused persons on 28/10/1989 and the period of 15 days for the service of the notice was to expire on 11/11/1989. The complaint, however, was filed on 6/11/1989. In these circumstances, I do not find any sufficient ground for interfering with the impugned judgment and order. The appeal deserves to be dismissed. The appeal stands dismissed.

(S.B. SHUKRE, J.)