

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1144 of 2009

1 M/s.S.V.A. India Ltd. .. Appellant

Versus

1. M/s.Natural Vitamins Pvt.Ltd,
Bombay
2. Mr.Prakash Takaria
3. The State of Maharashtra .. Respondents

Mr.M.G. Shukla i/b Mayur Narendra & Co. for the appellant.

Mr.I.B. Singh, Advocate for respondent nos.1 and 2.

Mrs.M.R.Tidke, APP for the Respondent State.

CORAM : ABHAY M. THIPSAY, J.

DATED : 15th JANUARY, 2016

ORAL JUDGMENT :-

1 The appellant – a limited Company – is the original complainant. It had prosecuted the respondent nos.1 and 2 herein on the allegation of having committed an offence punishable under Section 138 of the Negotiable Instruments Act. The respondent no.1 is a Private Limited Company. After holding a trial, the Metropolitan Magistrate, 20th Court, Esplanade, Bombay found the respondents not guilty, and passed an order of acquittal.

The appellant being aggrieved by the said order of acquittal has, after obtaining special leave of this Court, filed the present Appeal.

2 I have heard Mr.M.G.Shukla, learned counsel for the appellant. I have heard Mr.I.B.Singh, learned counsel for the respondent nos.1 and 2.

3 For the sake of convenience and clarity, the appellant is hereinafter referred to as 'the complainant' and the respondent nos.1 and 2 as 'the accused'.

4 The case of the complainant was that the accused Company had taken a loan from the complainant Company, and that, towards the repayment of the said loan, had issued two cheques i.e. cheque no.403203 dated 27th March 1997 for Rs.3,35,601/- and cheque no.349541 dated 16th April 1991 for Rs.16,00,000/-. These cheques were dishonored with the remarks "Exceeds arrangement". Since even after making a demand of the amount of the said cheques, the same was not paid, the complaint came to be filed. The accused no.2 was one of the signatories to the cheques. The other signatory was not prosecuted by the complainant.

5 The complainant examined one Jitendra Yadav, an Officer serving with the complainant Company, as a witness. The respondent also examined one Chetan Madhiyas as a witness in defence.

6 I have been taken through the entire evidence adduced during the trial. I have carefully gone through the impugned judgment.

7 The learned Magistrate did not accept that the cheques in question had been issued in discharge of a legally enforceable debt or other liability. He was of the view that the complainant had failed to establish this aspect of the matter.

8 The complainant's witness Jitendra Yadav had, admittedly, no personal knowledge of the loan transaction.

9 Admittedly, Jitendra Yadav had joined the complainant Company after the cheques were issued and dishonored.

10 Though the complainant and the accused no.1 both were Companies, no record in respect of the loan allegedly given

by the complainant Company to the accused Company, was produced. The complainant Company could not have advanced a short term loan to the accused no.1 without any resolution of the Board of Directors, or atleast without maintaining or keeping a record of the transaction. No such record was produced before the Court. Though the complainant claimed that the loan had been given to the accused Company by cheques, the details of the cheques were not at all given. No reason for not giving these details was mentioned.

11 The evidence of the defence witness suggested that there were some different transactions between the complainant Company and the accused Company, and that a blank cheque had been given by the accused Company to the complainant Company.

12 The doubt felt by the Magistrate about the truth of the complainant's case cannot be said to be unjustified. It indeed arises upon consideration of the evidence adduced, more particularly because of the failure of the complainant to tender any documents which ought to have been available, if a loan transaction had indeed taken place.

13 It is well settled that while dealing with the Appeals from Acquittals, this Court does not interfere in the matter if the view leading to the acquittal is a possible view of the matter. In this case, it cannot even be suggested that the view of the matter, as taken by the Magistrate is not a possible view.

14 Before parting, it may be observed that the operative order passed by the Magistrate is not proper. The operative order reads as follows :-

“Accused no.2 Prakash Tukaria, Director of M/s. Natural Vitamins Pvt.Ltd is hereby acquitted of the offence punishable under Section 138 of the Negotiable Instruments Act.

His bail bonds stands cancelled.”

15 The Magistrate has not mentioned anything about the acquittal of the accused no.1 Company. It is clear from a reading of the judgment that the acquittal that was ordered was of both the accused. The cheques in question had been issued by the accused no.1 and were signed by the accused no.2 and another on behalf of the accused no.1. The accused no.1 having been prosecuted, it was necessary for the learned Magistrate to have

passed an order of acquittal of the accused no.1 also. This was not done perhaps as a result of a misconception that the acquittal of the accused no.2 amounts to automatic acquittal of the accused no.1. This was not correct. This does not affect the outcome of the case or of the present appeal, but has been mentioned here only to correct the record.

16 Appeal is dismissed.

(ABHAY M.THIPSAY, J)

CERTIFICATE

**Certified to be true and correct copy of the original
signed Judgment/Order.**