

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO. 461 OF 2012

(NANDKISHORE RAMNIWAS SARDA...VS...JUGAL KHEMCHAND AGRAWAL)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A.HAQ, J.

DATED : FEBRUARY 15, 2016.

Heard Shri A.N. Ansari, advocate for the appellant/ original complainant and Shri S. Zia Quazi, advocate for the respondent.

The case of the appellant/ complainant is that there was an agreement of sale of the property between the appellant and the respondent and the property was to be sold by the appellant to the respondent for a total consideration of Rs.20,26,250/-. According to the appellant, the respondent paid Rs.10,26,000/- by three demand drafts, Rs.4,00,000/- by cheque which came to be honoured and for the balance amount two cheques were issued, one for Rs.5,00,250/- and other for Rs.1,00,000/-, which are not honoured, since the respondent informed the bank to stop the payment. According to the appellant, the sale-deed has been executed by the respondent on the basis of the power of attorney executed by the appellant in his favour and the property is transferred in the name of the wife of the respondent.

The defence of the respondent is that the appellant had earlier sold the property to some other person/

persons and the dispute is going on before the Civil Court. It is undisputed that Civil Suit No.1286 of 2004 is pending before the Court of Civil Judge Senior Division, Nagpur.

The learned Magistrate has considered all the relevant aspects and has recorded a finding that the appellant has failed to show that the two cheques which are dishonoured were issued by the respondent to pay the amount which cannot be said to be legally enforceable debt. The learned Magistrate has dismissed the complaint filed by the appellant.

I have examined the documents placed on record with the assistance of the learned advocates appearing for the parties. The findings recorded by the learned Magistrate considering the undisputed circumstance that Civil Suit No. 1286 of 2004 is pending, in my view, the judgment passed by the learned Magistrate cannot be faulted with.

Therefore, the appeal is **dismissed**. In the circumstances, the parties to bear their own costs.

JUDGE