

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.**

919 CRIMINAL APPEAL NO.81 OF 2008

SHYAMSUNDER LAXMANRAO PATIL

.. Appellant

VERSUS

SUBHASH BHAVARLAL VERMA

.. Respondent

...

Advocate for Appellant : Shri Amol Gandhi

Advocate for Respondent No.1 : Shri G.R. Sayed

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CORAM : P. R. BORA, J.

Dated: September 14, 2017

PER COURT :

1. The appellant has filed the present criminal appeal challenging the judgment and order passed by the Court of Judicial Magistrate, First Class (hereinafter referred to as the 'J.M.F.C. '), at Latur on 15th February, 2007 in S.T.C. No.1120/2004.

2. The aforesaid criminal case was filed by the present appellant against the present respondent under Section 138 of the Negotiable Instruments Act, 1881. It was the contention of the appellant – complainant that, he had paid a sum of Rs.Three Lakhs to the respondent – accused for purchasing the flat. An agreement of

sale in that regard was executed, however the said transaction could not be completed and as such according to the original complainant i.e. appellant the accused had paid an amount of Rs.2,45,000/- by way of cheque and the said cheque was dishonoured.

3. The learned J.M.F.C. has dismissed the complaint filed by the appellant holding that, the appellant failed to prove that, the cheque in question was issued in his favour by the respondent towards legally enforceable debt and consequently acquitted the respondent – accused.

4. In the present appeal, it is the contention of the appellant that, the learned J.M.F.C. has failed in appreciating the evidence on record as well as the transaction in between the parties and has, therefore, recorded a wrong conclusion leading to unmeritorious acquittal of the respondent – accused.

5. I have carefully perused the impugned Judgment and the evidence on record. In order to prove his allegations against the respondent, the appellant himself had deposed and had also adduced the oral evidence of three more witnesses. The evidence on record revealed that, the case so put forth by the appellant in his written

complaint as well as in his oral evidence before the Court has not been corroborated by the witnesses examined by him. PW No.2 Dadasaheb did not remain present to face the cross – examination, therefore, his evidence has been discarded by the learned Magistrate. PW No.3 Shivaji & PW No.4 Pandurang have not fully supported the complainants case. Moreover, they have admitted that, the complainant is their Superior Officer. PW No.3 Shivaji though in his examination-in-chief deposed that, while executing the document at Exh.35, he was present and in his presence the respondent handed over the cheque for the amount of Rs.2,45,000/- to the complainant, in his cross examination the said witness admitted that, on that day, the amount of Rs.1,50,000/- was paid by the accused in cash and the amount of Rs.1,50,000/- was paid by him through cheque. The said witness has further admitted that, the complainant had taken possession of and started residing in the subject flat prior to about three months of the execution of the agreement at Exh.35.

6. It is also revealed that, the notice sent by the appellant was not sent on the correct address of the respondent. As has been further observed by the learned Magistrate, the appellant in his cross – examination had admitted that, the facts stated by him in his examination-in-chief that on 29.10.2003 and on 05.11.2003, he paid

to the accused Rs.50,000/- each is incorrect. It was the justification given by the appellant that, the said facts were incorporated in his examination-in-chief inadvertently because of typographical mistakes. The learned Magistrate has rightly rejected his said explanation. After having considered the evidence on record, it does not appear to me that, the learned Magistrate has committed any error in reaching to the conclusion that, the evidence as has been adduced by the appellant is not dependable. Consequently, the learned Magistrate has dismissed the complaint and acquitted the accused.

7. After having considered the entire evidence on record, it does not appear to me that, the learned Magistrate has committed any error in dismissing the complaint. No such ground is made out even in the appeal to cause any interference in the impugned order. The appeal being devoid of any substance deserves to be dismissed and is accordingly dismissed.

(P. R. BORA, J.)