

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
APPEAL NO.335 OF 1998

Vasant Shanker Chavan
aged about 40 years, occupation
Agriculturist, residing at Borwade,
Taluka Kagal, Dist. Kolhapur

.. Appellant

Versus

1] Eknath Dattu Kamte
aged adult, occupation service
residing at Alabad (kapahi) Taluka
Kagal, Dist. Kolhapur

2] The State of Maharashtra

.. Respondents

Mr. Prashant Badale for appellant
Mr. P.H.Gaikwad, APP for State.

CORAM : N.M.JAMDAR, J.

DATE : 28th June 2017.

ORAL JUDGEMENT:-

1] By this appeal filed by the original complainant, the challenge is to the order passed by the Judicial Magistrate, First Class, Kagal dated 31st August 1996 acquitting the respondent No.1 of the offences punishable under section 138 of the Negotiable Instruments Act.

2] According to the appellant – original complainant, in the last week of January 1995, the respondent No.1 met the appellant and sought a loan of Rs.35 to 40,000. According to the appellant, an amount of Rs.25,000/- was lent to the respondent No.1 in the first week of February 1995, for which the respondent No.1 issued a post dated cheque bearing No.117993 drawn on State Bank of India dated 2nd April 1995. According to the appellant, the respondent No.1 had requested him to deposit the cheque few days after 2nd April 1995. The appellant, therefore, deposited the cheque on 24th July 1995 and according to the appellant, banker's sent a letter / memo to the appellant on 14th August 1995 intimating him that the cheque was dishonoured. The appellant gave notice on 21st August 1995 and filed a complaint under section 138 of the Negotiable Instruments Act (N.I.Act for short) on 26th September 1995.

3] The case was tried by the learned Magistrate as summary C.R.No.95 of 1996 for offences punishable under section 138 of N.I. Act. The learned Magistrate, after considering the evidence on record, came to the conclusion that the complaint was not filed within the period of limitation as required and proceeded to acquit

the respondent on this count.

4] Heard Mr. Badale, the learned Counsel for the appellant and the Mr. Gaikwad learned APP. By the order passed earlier this Court had issued warrant to the respondent No.1 who has remained absent.

5] Mr. Badale, the learned Counsel for the appellant submitted that the learned Magistrate has held that the cheque was issued in discharge of the liability, however, has acquitted the respondent No.1 only on the ground of limitation which from the discussion, it appears that the learned Magistrate was under wrong impression as regards the dates. Mr. Badale submitted that the learned Magistrate has erroneously given importance to a typographical error in the complaint which states incorrect date at only one place. He submitted that if the evidence on record is perused, it is seen that it was merely a typographical error.

6] I have considered the contentions raised and perused the record and impugned judgement. Though it is correct to state that

the learned Magistrate proceeded on incorrect factual premise as contended by the learned Counsel for the appellant, it is not the only facet of limitation on which the respondent No.1 was acquitted. The notice has to be sent within 15 days from the receipt of the banker's memo. According to the appellant, the banker's memo was received on 14th August 1995 and the notice was issued on 21st August 1995. Therefore, proving of receipt of banker's memo was a crucial step that the appellant needed to cross. The learned Magistrate has held that the appellant did not provide the receipt of banker's memo on 14th August 1995 and this crucial piece of evidence has not come on record. The explanation given by the appellant that the bankers' memo was lost has rightly not been believed by the learned Magistrate as lack of any satisfactory explanation. Since the crucial document did not come on record, which would establish that the proceedings were initiated within the period of limitation, the benefit was rightly extended to respondent No.1. Since the bankers' memo has admittedly not brought on record, the view taken by the learned Magistrate giving benefit to respondent No.1 and holding that the complaint was not filed within the period of limitation, cannot be stated to be a perverse view.

7] Considering this factor and considering the passage of time and nature of offence, I am not inclined to reverse the order of acquittal as no case is made out in that regard. The appeal is accordingly dismissed. No costs.

(N.M.JAMDAR, J.)