

Sequeira

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

CRIMINAL APPEAL NO. 330 OF 1999

Sudhir Shankar Telang,
602, Krishna Apartment,
J.P.Road, 4 Bungalows,
Andheri (West), Bombay -53

.. Appellant

Vs

1. Kishore Shingnapurkar,
32, Habib Park, Clare Road,
Byculla, Mumbai – 400 008.
2. M/s.Kishor Foot Wear, Pvt. Ltd.,
204-A, Byculla Service Industrial
Estate, Dadoji Kondeo Marg,
Byculla Mumbai.

3. State of Maharashtra.

.. Respondents

None for the Appellant.

Ms.Tasneem Khatau i/b Mr.Nitin Pradhan-Senior Advocate &
Ms.S.D.Khot, for Respondent No.2.

Mrs.M.R.Tidke - Additional Public Prosecutor, for Respondent No.3-
State.

***Coram : N.M.Jamdar, J.
Date : 19 June 2017.***

Oral Judgment :

This Appeal is filed by the original Complainant challenging the order passed by Metropolitan Magistrate, Mumbai acquitting the Respondent Nos.1 and 2 from the charge of offences punishable under section 138 read with 142 of Negotiable Instrument Act 1881.

2. The Appellant filed a complaint against Respondent Nos.1 and 2 (the Respondents) for offences punishable under section 138 read with 142 of Negotiable Instrument Act, in respect of dishonour of two cheques for Rs.20,000/- each, dated 10 June 1992. It was his case that the cheques were issued by the Respondent No.1 for part payment towards Appellant's architectural consultancy fees. When the Appellant deposited the cheque with his bankers on 28 August 1996, the same returned with the memo-'Insufficient funds'. Notice was issued on 4 September 1996 and thereafter a criminal complaint was filed. Learned Magistrate considered the oral and documentary evidence produced on record and came to the conclusion that the Appellant did not prove that there was any existing legal liability and the case of the Respondents that the cheques were issued for buying remaining material, was accepted and the order of acquittal was passed on 14 January 1999.

3. The Appeal is pending since the year 1999. On 25 August 2016, since none appeared for the Appellant, notice is issued through Court to him. Registry has endorsed that the notice has been

duly served on the Appellant. The report of the Versova police station Mumbai to this Court is placed on record, which shows that the notice was served through police station Versova personally to the Appellant at his residence which he has signed. Thereafter Appellant has not made any arrangement to prosecute the Appeal. The Board is notified in advance. None appears for the Appellant. Considering the nature of the proceedings and the fact that the Appeal is pending since the year 1999 and that Appellant had shown no interest to prosecute the Appeal, with the assistance of the learned counsel for Respondents and the learned Additional Public Prosecutor, I have gone through the Record and Proceedings.

4. It was the case of the Appellant that the relations between the Appellant and Respondent No.1 were cordial, and the Appellant was engaged as an interior designer for the purpose of carrying out renovation / repairs of the premises of the Respondents. It was his case that it is towards this service, that the cheques were issued, which have been dishonoured. The defence of the Respondent No.1 was that the Appellant was not appointed as interior designer alone but also as a contractor and an amount of Rs.4,35,000/- was already given to the Appellant. It was further the case of the Respondent No.1 that the amount of Rs.40,000/- by these two cheques was towards purchase of additional material.

5. As far as the position of the Appellant as an interior designer is concerned, nothing is placed on record by way of any

writing that the Appellant was appointed as an interior designer. No drawings or designs have been placed on record. The learned Magistrate relied upon the admission of the Appellant that he had appointed sub-contractors, which could not have been done unless he was the main contractor. This view taken by the learned Magistrate based on the documentary evidence and admission of the Appellant, is a possible view.

6. Second aspect is regarding receipt of Rs.4,35,000/-. It was the case of the Appellant that though he had acknowledged the receipt he had never received the amount. The learned Magistrate, noted this admission and rightly disbelieved the case of the Appellant, as no prudent person would sign a receipt without actually receiving the amount. There is no error in this conclusion as well.

7. Another factor was as to how the amount of Rs.40,000/- was to be attributed towards his fees. The Appellant did not explain how the same was calculated. The learned Magistrate, therefore on the basis of the evidence, concluded that the amount of Rs.40,000/- was not towards any existing liability for charges as interior designer but for purchasing remaining material.

8. The conclusions drawn by the learned Judge on the basis of appreciation of evidence regarding a non-existence of legal liability, is a possible view. The scope of appeal against acquittal is settled. Unless the findings and the conclusions of the Trial Court are

perverse, the order of acquittal is not to be lightly reversed. In these circumstances, I do not find that there is any merit in this Criminal Appeal, which is accordingly dismissed.

(N.M.Jamdar, J.)