

3 The learned Advocate for the revision petitioner drew my attention to the appellate Court order and argued that without assigning sufficient reason, the learned appellate Court has upset the order impugned by him, whereby the respondent/original accused came to be convicted of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

4 Mr.Anand Dubey, the learned Advocate appearing for the respondent No.1/original accused argued that the respondent No.1/original accused had made payment to the complainant, but by suppressing this aspect, the complaint came to be filed. He argued that suitable order may kindly be passed.

5 I have carefully considered the rival submissions. I have also perused the Record and Proceedings made available. The revision petitioner is the original complainant. He filed a complaint alleging the commission of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 by the respondent No.1 before this Court. It was the case of the revision petitioner/original complainant that he had advanced friendly loan of Rs.1,50,000/- to the respondent No.1/original accused and for discharging this legally enforceable debt, the accused had issued the cheque dated 19/11/2008 drawn on Abhyudaya Co-operative Bank Ltd., Mumbai for the sum of Rs.1,50,000/-. It was ultimately dishonoured for a reason that the account of the accused is closed.

6 The complaint filed by the revision petitioner/original complainant came to be tried on merit. Following points came to be considered by the learned trial Court in its elaborate Judgment discussing pros and cons of the case of the complainant :

Sr. No.	POINTS
1	Whether disputed cheque was issued by accused in order to discharge his legal liability as alleged by complainant ?
2	Whether disputed cheque was dishonoured for the reason "Account Closed" as alleged ?
3A	Whether statutory notice was served on accused as per requirement of law ?
3B	If yes, whether accused failed to pay the cheque amount within 15 days from the date of service of notice ?
4	Has accused committed an offence punishable U/Sec.138 of N.I.Act ?
5	What order ?

7 Ultimately, by holding that the alleged offence is proved, the following order came to be passed by the learned Metropolitan Magistrate, 6th Court, (Mazgaon), Sewree, Mumbai :

ORDER

- 1) Accused Mr.Shatrughan Shankar Birje is hereby convicted of the offence punishable U/sec. 138 of the Negotiable Instruments Act and he is sentenced to suffer simple imprisonment for 2 months 15 days (Two months and Fifteen days).

- 2) He is further directed to pay (1) an amount of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only), (2) 9% p.a. simple interest on such amount from dated 10/02/2008 till actual realization and (3) amount of cost of proceeding Rs.2,000/- (all these three amounts together by way of compensation) within the period of one month to the complainant, in default, he shall suffer sentence of Simple imprisonment for the period of 233 months (three months).
- 3) Accused shall surrender his bail bonds.
- 4) Copy of judgment be supplied to the accused free of cost immediately.
- 5) Judgment is dictated and pronounced in open Court.

8 This order came to be challenged by the respondent No.1 herein i.e. the original accused by filing a Criminal Appeal, which came to be registered as Criminal Appeal No.647 of 2013. It is seen from the impugned Judgment and Order passed by the appellate Court on 28/07/2015 that both contesting parties were absent. On 28/07/2015, with the following reasons recorded in paragraph 9, the impugned Judgment and Order of conviction came to be upset and the appeal came to be allowed :

“9. Though nobody took part in arguments, on the earlier day, Ld. Advocate Mr.Panchal for Appellant has submitted that proceedings between the parties are already settled.

Moreover, considering the findings given by the Ld. Lower Court, I found merits in the grounds made out by the appellant. Considering the same and when Appellant and Respondent No.1 and their advocates remained absent, under such circumstances, I hold it proper to set aside the said judgment and other of Ld. Lower Court. I, therefore, answer point No.1 partly in the affirmative.”

9 Perusal of the impugned Judgment and Order passed by the learned appellate Court on 28/07/2015 shows that the matter was not touched on merits. No reasons which constitute heart and soul of the order are found in the impugned Judgment and Order of the appellate Court by which well reasoned Judgment and Order of the trial Court came to be upset. The appellate Court allowed the appeal only with a reason that it has found merits in the grounds made out by the appellant. This cannot be the approach while deciding the appeal challenging the conviction as the appeal is continuation of the trial. When both parties were absent on the date of hearing then instead of adopting such a short cut method, the learned appellate Court at least ought to have perused the Record and Proceedings and then he ought to have decided the appeal on its own merit rather than giving a one line reason that it found merits in the grounds made out by the appellant. What were those grounds and how those were meritorious in the light of evidence on record is not even discussed even by writing a single line by the learned appellate

Court. Recording of reasons for quashing and setting aside the order of conviction recorded by the trial Court is necessary so as to indicate that the appellate Court has given due consideration to the evidence on record. Reasons recorded are beneficial to the higher Court for ascertaining as to whether the matter is correctly decided on the basis of evidence on record or not. It is seen that the appeal is decided by adopting a short cut method without applying mind by the learned appellate Court. It is thus seen that the impugned Judgment and Order passed by the appellate Court is totally perverse and without application of mind. As such, the order :-

- (i) The impugned Judgment and Order passed by the learned Special Judge under P.C.Act, Mumbai in Criminal Appeal No.647 of 2013 arising out of Criminal Case No.1045/SS/2009 is quashed and set aside.
- (ii) The matter is remanded to the appellate Court with a direction to decide the appeal afresh after hearing both parties on its merit. The learned Sessions Judge, Mumbai is requested to assign the appeal to the file of some other Additional Sessions Judge than the one who had decided the same.
- (iii) The revision petition is accordingly disposed of.

(A. M. BADAR, J.)