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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 298 OF 1997***

M/s. Mahavir Feeds,
A Registered Partnership Firm,
951, Raviwar Peth, Pune – 2.

... Appellant.
(Orig. Complainant)

V/s.

1. Viraj Agency,
Urali Kanchan, Taluka – Haveli,
District – Pune.
2. Mr. Rajendra Madhukar Kamlapurkar
Age : 30 years, Occupation : business,
R/o. : Adarsha Sahakari Society,
Pune – Satara Road, Pune.
3. Mr. Vilas Bhimrao Gavane,
Age : 32 years, Occupation : business,
R/o. : Urali Kanchan, Taluka : Haveli,
District – Pune.

4. State of Maharashtra.

... Respondents.

None for the Appellant.

Mr. S.S. Kulkarni for Respondents 1 to 3.
Mr. P.H. Gaikwad Patil, Asstt.Govt.Pleader for the State.

CORAM : N.M. JAMDAR, J.

DATE : AUGUST 10, 2017.

P.C. :-

This Appeal against Acquittal is filed by the Original Complainant challenging the judgment and order passed by the Judicial Magistrate, First Class, Pune in SCC No. 4634 of 1992 dated 29 March 1997, acquitting the Respondent Nos.1 to 3 of the offences punishable under Section 138 of the Negotiable Instruments Act.

2. The complaint was filed by the Appellant against the Respondent Nos. 1 to 3 on the ground that the Respondents – Accused, who were the dealers of the Appellant, had given cheques of the amount of Rs.3,73,905/- in respect of payment of price of cattle feeds purchased by them. It was the case of the Appellant – Complaint that when these cheques were deposited, they were dishonoured with remark “Refer to Drawer”. After notice was given, the complaint was filed. The learned Magistrate found that the cheques were issued by the Respondent Nos. 1 to 3 and they were dishonoured however proceeded to acquit the Respondents – Accused by the judgment and order dated 29 March 1997, holding that the cheques were not given for any debt but as a security.

3. The Appeal has come up on board on many dates when none was present on behalf of the Appellant. On 17 July 2017 adjournment was granted by way of last chance. Today the matter is notified under the caption 'for dismissal/disposal'. None appears for the Appellant. The learned Counsel for the Respondents – accused and the Asstt. Public Prosecutor are present. Considering the fact that the cheque was issued in the year 1992, that is almost 25 years back and the Appeal is pending since last 20 years, I proceeded to decide the Appeal with the assistance of the learned Asstt. Public Prosecutor and the learned Counsel for the Respondents – Accused.

4. The scope of the appeal against acquittal is well settled. Unless the findings are perverse or that the conclusion is impossible, the Court will not ordinarily reverse the order of acquittal. In the present case the parties have led evidence which was considered by the learned Magistrate. If the cheques were to be issued for security and not for any legally enforceable debt, the offence under Section 138 of the Negotiable Instruments Act, will not arise. In the agreement between the parties for agency itself it has been provided that the Respondents – accused will give blank cheques to the Appellant. The learned Judge has considered this aspect to come to the conclusion that the cheques were given for the purpose of security. If the agreement itself provided that the blank cheques will be given, it cannot be said that the finding of the learned Magistrate

that the cheques were given for security is totally perverse. The learned Counsel for the Respondents – accused has also pointed out that the accounts were also not produced by the Appellant.

5. Considering these lacunaes, the learned Magistrate, upon appreciation of evidence, has taken a view which cannot be said to be a perverse one. Considering the scope of the appeal against acquittal and the fact that the incident has occurred 25 years ago, I do not find that this is a fit case where the order of acquittal needs to be reversed. In any case, if any civil suit is pending, it would be considered on its own merit, since the scope of the civil suit and proceedings under Section 138 of the Negotiable Instruments Act would be different. The Appeal is dismissed.

(N.M. JAMDAR, J.)