Sequeira

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 375 OF 2003

Shri Amreshchandra, 72 yrs.
Occ.: Retired, Chartered Engineer,
R/at : Plot A/14, Shriharshin Apartment,
Shahad Rly. Station, Shahad, Kalyan
Dist. Thane. .. Appellant

Vs

1. Modern Equipment Development Company Pvt. Ltd., having its Head office at : Sudhanshu Chamber, Second floor, Shivaji path, Kalyan(E), Dist. Thane.

2. Shri Yogendralal Arora, 66 yrs., Occ. Director of Accused No.1.

3. Sow.Neeta Y.Arora, 61 yrs., Occ. Director of Accused No.1

4. Shri Anant Sadashiv Datar, 61 yrs., Occ. Director of Accused No.1.

Accused Nos.2 & 3 are residing at :
Flat No.104, Shivam Society, Bhanu Estate,
Near Bhanu theatre, Valipir Road, Kalyan
Dist. Thane, and

Accused No.4 is Residing at :
14, Sonali co-operative Hsg. Society,
Saat Namdev Path, Dombivali (E),
Tal. Kalyan, Dist. Thane

5. The State of Maharashtra through
Govt. Pleaders, High Court, Mumbai. .. Respondents

None for the Appellant.

Mrs.M.R.Tidke – Additional Public Prosecutor, for Respondent - State.

Coram : N.M.Jamdar, J.
Date : 28 June 2017.

Oral Judgment :

The Appellant has challenged the judgment and order passed by the Judicial Magistrate First Class, Kalyan in Criminal Case No.190 of 1991 acquitting the Respondents No.1 to 4 for the offences under section 113(2) and 162(1) of the Companies Act, 1956 and under section 406 read with section 34 of the Indian Penal Code.

2. According to the Appellant-Complainant, Accused no.1 and 2 induced the Appellant to invest in shares of the Company by name Modern Equipment Development. Accordingly the Complainant pledged 125 equity shares in Century Rayon Company and raised a loan of Rs.50,000/-. The Complainant purchased 300 shares of Rs.100/- each and he paid Rs.30,000/- to the Accused. According to the Complainant, the Accused were duty bound to issue 300 shares which were not issued as agreed. According to the Appellant this inaction on the part of the Respondents-Accused is an

offence punishable under section 113(2) of the Companies Act, 1956 read with section 406 of the Indian Penal Code. After recording the verification statement the learned Magistrate directed the police authorities to hold an inquiry and a report under section 202 of Code of Criminal Procedure was filed. Process was issued against the Respondents-Accused, charge was framed against Respondents-Accused under section 113(2), 162(1) of the Companies Act and Section 406 read with section 35 of Indian Penal Code. The learned Magistrate after considering the record and the evidence acquitted the Respondent-Accused by the judgment and order dated 28 August 2002. Thereafter present appeal against acquittal is filed.

3. After the Appeal was admitted it was once dismissed for default and restored. Thereafter when the Appeal came up on board on 22 December 2016 and 11 May 2017, none appeared for the Appellant. The incident has taken place in the year 1984. Case was filed in the year 1991. The acquittal is of the year 2002 and whenever the Appeal has come up, none has appeared for the Appellant. It is noticed from the memo of the Appeal that the age of the Appellant as on date is 87 and the Accused are above the age of 75. In these circumstances, with the assistance of the learned APP, I have gone through the record and proceedings.

4. The main grievance of the Appellant is regarding non-issuance of shares inspite of payment of money to the Respondent-

Accused. When the Respondent No.1 Company had filed a Civil Suit No.300 of 1996 in the Civil Court, Kalyan, an order of injunction was passed restraining the Appellant from entering the premises of the Company. The order of injunction was confirmed in September 1986. It appears that the Appellant was giving advice to the Respondent No.1 Company for civil construction work. There was a civil dispute between the Appellant and the Respondents-Accused.

5. If the shares were not issued as alleged by the Appellant, the Appellant did not take any action for period of sixteen months, which is is more than one and a half years. No steps were taken to seek duplicate shares and the complaint was also filed after period of seven years. It was brought on record that in the past, the Appellant had collected shares from the Respondent-Company by visiting the Company premises and without signing the vouchers. Therefore, once the issue of nondelivery of shares arose for consideration, the Learned Magistrate before him had two positions. Firstly, whether the shares were not delivered after payment, or the shares were taken by the Appellant but vouchers were not signed. Since it was brought on record that in the past the Appellant had in the past collected shares without signing the vouchers when the relations were cordial, he could have done the same in respect of the shares in question but filed a complaint after period of seven years, after the strained relations. Considering the relationship of parties where Appellant

was advising the Company, thereafter the dispute which led to Civil suit and injunction, the view taken by the learned Magistrate that cheques could have been collected without signing the vouchers cannot be said to be an impossible or perverse view.

6. Furthermore as stated above, almost 35 years have gone past since the transaction between the parties took place. All the parties are of advanced age now. Considering these circumstances and the merits of the Appeal I am not inclined to reverse the order of acquittal passed by the learned Magistrate. The Appeal is accordingly dismissed.

(N.M.Jamdar, J.)