

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APPA) NO.51 OF 2016

(Shri Ganesh Nagari Sahakari Pat Sanstha thr. its Authorised Signatory Mr. Arun
Kamlakar Mohoril Vs. Shailendra @ Shailesh Laxman Borkar)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Shri Ketan V. Bhoskar, Advocate for Appellant.
None for Non-Applicant/Respondent.

CORAM: ROHIT B. DEO, J.

DATE: 9th NOVEMBER 2017.

By order dated 12.10.2017 the applicant, who is seeking leave to appeal under section 378 (4) of the Code of Criminal Procedure to challenge a judgment of acquittal of offence under section 138 of the Negotiable Instruments Act, 1881, was permitted to serve the non-applicant by furnishing the correct address.

The matter is listed in order matters since the counsel has not supplied the correct address for issuance of fresh notice.

The learned counsel has however, stated that on fresh verification, it is noticed that the address is correct and that he be granted Hamdast to serve the non-applicant.

The service of notice on non-applicant is dispensed with.

The application is heard on merits, with the consent of the learned counsel for the applicant.

The learned Magistrate has recorded a finding of fact that the statutory notice is not served on the non-applicant-accused. The learned Magistrate has firstly recorded a finding that the statutory notice was issued on a correct address. The address of the non-applicant in the loan papers is 'Kamla Nagar'. The address on the registered envelope is however, 'Rupchand Nagar'. I have noted from a perusal of the judgment, that the submission of the complainant was that 'Kamla Nagar' and 'Rupchand Nagar' are localities which are adjacent to each other. The submission is rightly rejected by the learned Magistrate. My attention is drawn by the learned counsel to the personal bond papers filled in by the accused in which the address is mentioned as 'Rupchand Nagar'. But then, the learned counsel fairly does not dispute that the said document was neither brought to the notice of the accused or the learned Magistrate nor was any submission based on the basis thereof. I am afraid, this Court cannot look into the said document to disturb the finding of fact recorded by the learned Magistrate that the statutory notice was not sent on the correct address.

More importantly, CW 2 admits that Exh.60 with purports to be acknowledgement as regards the statutory notice, is apparently signed by one Smt. C.A. Sawdekar and not by the accused. This admission is the final nail in the coffin of the complainant's case.

The judgment of acquittal does not suffer from any perversity. A possible view is taken. There is no reason

why this Court should have a second look at the judgment of acquittal.

Leave to file appeal under section 378 (4) of Cr.P.C. is therefore, rejected.

JUDGE

NSN