

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

**CRIMINAL APPEAL (APEAL) NO 263 of 2017**

( Bharat Motors,through Proprietor Shri Arvind Vinayak Khandekar..vs..Murlidhar Jaykisan Paliwal )

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

Court's or Judge's orders.

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Shri Sumit G.Joshi, Advocate for appellant.  
None for respondent.

**CORAM : V.M. DESHPANDE, J.**  
**DATED : JUNE 28, 2017**

1. Heard learned counsel for appellant.
2. The present appeal is filed against the judgment and order of acquittal passed by Learned J.M.F.C. Sangrampur, District-Buldhana dated 13/1/2016 in Summary Criminal Case No.18/2015 by which the Court below acquitted respondent of the offence punishable under Section 138 of Negotiable Instruments Act.
3. As per the complainant the respondent purchased tractor model RX-750 of Sonalika make from appellant-complainant. The complainant states that the value of the said tractor alongwith accessories was Rs. 6,52,000/-. It is further case of the complainant that at the time of transaction on behalf of the respondent, the complainant incurred expenses of Rs. 54000/- in respect of policy, passing of tractor , bank

process and marginal amount. The complainant further states that respondent-accused issued a cheque bearing no.333795 dated 18/12/2012 drawn on Nandura Urban Cooperative Bank Limited,Nandura, Branch Sangrampur for Rs. 54000/-. The said cheque was deposited by the complainant with its banker Central Bank of India,Branch Khamgaon. However, cheque drawn by the respondent-accused was not honoured by his banker for the reason “ funds insufficient”. Statutory notice was issued by the complainant on 8/2/2013 which was received by the respondent-accused on 11/2/2013. Inspite of the same the amount was not paid , therefore the complaint was filed.

4. Complainant examined power of attorney holder. The disputed cheque is at Exh.28. The defence of the respondent is total denial. He also entered into witness box and also produced letter issued by Bharat Motors(Exh.45).

5. Though on behalf of complainant Bhagirath Purushottam Kawadkar entered into the witness box as power of attorney holder, the Court below noticed that neither the original of power of attorney or its certified copy is filed on record.

6. It is to be noted that though it is the case of the complainant that he incurred expenses for and on behalf of respondent for registration and other expenses no document is filed on record giving the account of the said expenses. It is established on record that the respondent gave 12 blank cheques to the complainant. As per the defence of the respondent he issued blank cheques as a security in favour of the complainant in respect of the loan transaction. On the appreciation of the evidence the Court below noticed that the complainant has failed to prove that cheque was issued in discharge of his legal liability. Learned counsel for the appellant could not point out before this Court as to how an amount of Rs. 54000/- was outstanding in the name of respondent. That probablise the defence of the respondent that he handed over the blank cheques by way of security and same was misused. Hence, I see no reason to allow the present appeal. Appeal is therefore dismissed.

**JUDGE**