

(1)

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

CRIMINAL APPLICATION (APPA) NO.743 OF 2016

Rajashree @ Rajeshwari w/o
Chandrabhushan Jaiswal,
Aged about 46 yrs, Occ.
Household, R/o 156, Nara Road,
Jaripatka, Police Station,
Jaripatka, Nagpur

..APPLICANT

VERSUS

1. Bhartidevi Motiram Moryani,
Aged about : Major,
Occ. Household,
2. Motiram Gagandas Moryani,
Aged major, Occ. Private

Both R/o Panchpaoli Road,
Kashmiri galli, Nagpur

..RESPONDENTS

Ms K.P. Deshmukh, Advocate for applicant

CORAM : N.W. SAMBRE, J.

DATE : 16th March, 2017

ORAL ORDER

Heard.

2. For the reasons stated in the application, delay of 117 days caused in preferring the appeal stands condoned.

3. By the present appeal, the appellant-original complainant challenges the judgment and order of acquittal dated 12th May, 2015, rendered by the learned Judicial Magistrate & Special Court for 138 N.I. Act, Nagpur, in

(2)

Summary Criminal Case No.228 of 2002.

4. It is the case of the applicant that she is second wife of one Chandrabhushan Jaiswal. Sandhya, the first wife of Chandrabhushan Jaiswal entered into an agreement for transfer of CL-III license in favour of respondent-accused and in consideration thereof, the disputed cheque came to be issued. The cheque was returned by the banker with an endorsement "stop payment". As such, the complaint for an offence punishable under Section 138 of the Negotiable Instruments Act was filed.

5. By judgment and order dated 12th May, 2015, learned Judicial Magistrate First Class, Nagpur acquitted the respondent – accused of offence punishable under Section 138 of the Negotiable Instruments Act.

6. The claim that is sought to be put forth by the appellant is under the Negotiable Instruments Act, there is presumption in favour of holder of the cheque. Learned Counsel appearing on behalf of the appellant invites my attention to the provisions of Section 118 read with Section 139 of the Negotiable Instruments Act. She would then urge that the transaction in question, in regard to transfer of country liquor licence is not in dispute, however, according to her, the acquittal is based on the fact that there was no agreement between the present appellant and respondent – accused. In addition, she would invite attention of this Court to the fact that the learned Magistrate, while ordering acquittal has failed to consider and appreciate the alleged transaction between the parties.

(3)

7. With the assistance, I have perused the judgment of acquittal, which is questioned in the present appeal. It is to be noted that licence No. 157-2001-02 was originally granted in favour of Smt. Sandhya Jaiswal, which was agreed to be transferred to respondent no.1 – accused. Respondent no.2 – accused is claimed to be the signatory to the cheque in question. Admittedly, there is no transaction between respondent no.2, i.e. the person who had issued the cheque and the complainant. The transaction, if any, was between the original licence holder Smt. Sandhya Jaiswal and respondent no.1 – accused. The said evidence is categorically dealt with in paragraph 9 of the judgment by the learned Magistrate while dealing with the claim put-forth by the appellant. The appellant, in clear terms, has given an admission that there was no transaction between the appellant and respondent no.2.

8. Once it is established through evidence that there was no legal liability *qua* the transaction in question, in my opinion, the order of acquittal passed by the learned Magistrate is in tune with the legal provisions. In view thereof, no interference is warranted. Thus, Criminal Appeal fails and stands rejected.

(N.W. SAMBRE, J.)

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