

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

CRIMINAL APPEAL NO.514 OF 2004

Radhyeshm Gopikishan and Company,
through its Partner Shri.
Radhyeshyam Gopikishan Agrawal,
Age: 55 years (Now about 62 years)
Occup:Business, R/o. Dr. Rajendra
Prasad Road, Sadar Bazar, Jalna
Tq. and Dist. Jalna

**...APPELLANT
(Ori. Complt.)**

VERSUS

1. M/s Kashmirilal Manojkumar Jalna
through its proprietor Shri.,
Kashmirilal s/o. Harising Gupta,
Age: about 62 years, Occ.Business,
R/o. Bharat nagar, Jalna, Tq.
and Dist. Jalna
2. Kashmirilal s/o. Harising Gupta,
Age: about 62 years, Occ. Business,
R/o. Bharat Nagar, Jalna,
Tq. and Dist. Jalna
3. The State of Maharashtra.

**...RESPONDENTS
(Ori. Accused)**

...

**WITH
CRIMINAL APPEAL NO.518 OF 2004**

Radhyeshm Gopikishan and Company,
through its Partner Shri.
Radhyeshyam Gopikishan Agrawal,
Age: 55 years (Now about 62 years)
Occ.:Business, R/o. Dr. Rajendra

Prasad Road, Sadar Bazar, Jalna
Tq. and Dist. Jalna

**...APPELLANT
(Ori. Complt.)**

VERSUS

1. M/s Kashmirilal Manojkumar Jalna
through its proprietor Shri.,
Kashmirilal s/o. Harising Gupta,
Age: about 62 years, Occ.Business,
R/o. Bharat nagar, Jalna, Tq.
and Dist. Jalna

2. Kashmirilal s/o. Harising Gupta,
Age: about 62 years, Occ. Business,
R/o. Bharat Nagar, Jalna,
Tq. and Dist. Jalna

**...RESPONDENTS
(Ori. Accused)**

3. The State of Maharashtra

...RESPONDENTS

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Shri. N.S. Shah, Adv. h/f. Shri. S.V. Natu, Adv. for
respondent nos. 1 & 2 in both appeals;
Shri. A.A.Jagatkar, APP for Respondent no.3 State in both
appeals.

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CORAM: P.R.BORA, J.

DATE : March 6th, 2018.

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ORAL JUDGMENT:

1. In both these appeals, the appellants and the
respondents are same. Common arguments are, therefore,

heard in both these appeals of learned Counsel appearing for the respondents, who alone is present before the Court. Learned Counsel for the appellant has been discharged by this Court. The record of the case shows that at the Court motion notice was issued to the appellant to take necessary steps to proceed with these appeals, and to make necessary arrangements if the Counsel, who was appearing for appellant previously is not arguing the matter, or if appellant has taken back the papers from the said Counsel. However, despite service of said notice, the appellant has not taken any step to proceed with these appeals. The appeals are, admittedly, filed in the year 2004. In view of the facts as aforesaid, I have decided to look into the grounds of objections as are raised in the memo of appeals in exception to the impugned judgment and to decide the appeals on merits with the assistance of the learned Counsel for the respondents, who is present before the Court.

2. The appellant had filed total five complaints under Section 138 of the Negotiable Instruments Act against the present respondents. Record reveals that the learned Judicial Magistrate, First Class, had clubbed all the five complaints and

common evidence was recorded in Summary Triable Case No.1161/1997. The learned trial Court vide order passed on 16th of September, 2002, has dismissed the complaints so filed by the appellant and acquitted the accused therein. The appellant then preferred application seeking leave to appeal which was granted and the present appeals came to be registered.

3. From the averments in the complaints, it was the case of the present appellant before the trial Court that the present respondents i.e. original accused had purchased maize on credit from the appellant firm and towards price of the maize so purchased by the respondents, total five cheques were issued by the respondents in favour of the appellant firm. It was also the contention of the appellant in the complaint filed by him before the trial Court that the cheques which were allegedly issued by the respondents were dishonoured for insufficient funds in the account of the respondents / accused and appellant had, therefore, issued statutory notice as is required under Section 138 of the Negotiable Instruments Act before filing the complaint. It was appellant's further contention that since despite service of the notice, the accused did not pay the amount of cheque within the stipulated period,

appellant was constrained to file the complaints under Section 138 of the Negotiable Instruments Act.

4. The record further reveals that in order to substantiate his case raised in the complaint, partner of the appellant firm, namely, Radhesham Gopikishan Agrawal, had deposed before the Court and had also examined two more witnesses in support of his contention. Appellant had examined one Pandit Jadhav (PW 2) who was Clerk in the Office of the Agricultural Produce Market Committee, Jalna, and one Pramod Prabhakar Mule, Branch Manager of State Bank of India (DW 3). The defense of the respondents / accused was that the cheques in question were not issued by them and were not bearing signature of respondent no.2. The respondents / accused did not enter the witness box nor examined any witness in their defense. Learned Magistrate, after having assessed the oral and documentary evidence brought on record before him eventually dismissed the complaints and acquitted the accused.

5. In the present appeals, it is the contention raised by the appellant that the trial Court has failed in properly appreciating the evidence on record which has resulted in

unmeritorious dismissal of the complaints filed by him. It seems to be further contention of the appellant that had it been the fact that the questioned cheques were not issued by the respondents / accused, at the first blush, the objection would have been raised by the respondents and they must have sought their discharge from the case. It seems to be further contention of the appellant that not taking of any such action by the respondents / accused impliedly indicates that they were having transactions with the appellant firm and the subject cheques were issued by the respondents towards legally enforceable debt which they were owing to the appellant firm.

6. The objection, raised as above by the appellant, however, does not appear to be tenable in view of the evidence on record. As has been observed by the learned Magistrate in paragraph no.17 of the judgment, the Branch Manager Shri Mule has specifically deposed that all the cheques placed on record in five distinct complaint cases were not bearing signature of accused no.2 Kashmirilal Harisingh Gupta. It was further admitted by the said witness that the cheques as produced in the cases filed by the appellant were not signed by respondent no.2 viz; Kashmirilal Harisingh Gupta. It is further observed by the trial Court that the Branch Manager also

admitted that the signatures appearing on the cheques were of Manojkumar Kashmirilal Agrawal and not of Kashmirilal Harisingh Gupta i.e. respondent no.2. In view of the evidence which has come on record, it does not appear to me that any error was committed by the learned Judicial Magistrate, First Class, since the very basic ingredients were not satisfied. I have also gone through the record of the case. The record also does not support the allegations as are made by the appellant. From the record it is revealed that Kashmirilal Manojkumar is the firm of which Manojkumar Kashmirilal Agrawal is the proprietor and respondent no.2 herein, namely, Kashmirilal Harisingh Gupta has no concern with the aforesaid firm. In the circumstances, it does not appear to me that any interference needs to be caused in the impugned judgment and order.

Both the Criminal Appeals being devoid of substance, deserve to be dismissed and are accordingly dismissed.

(P.R.BORA)
JUDGE

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