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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO.1253 OF 2005
WITH
CRIMINAL APPEAL NO.1254 OF 2005**

Messrs. Biharilal Ramnarayan Mantri
H.U.F. concern through its Co-owner
and Vahiwatdar Shri Premsukh Biharilal
Mantri, aged about 65 years,
Occupation: Business and Agriculturist
Residing at Daund, Taluka: Daund,
District- Pune

... Appellant

Vs

1 Shri Anil Narottamdas Shah
Proprietor, NAMOSHA, age-Adult
Occupation: Business,
Residing at Shatrunjay Vihar
Society, A Block, Plot No.2,
Maharshi Nagar, Adjacent to
Saubhagya Mangal Karyalaya,
Satara Road, Pune 411 037

2 The State of Maharashtra

... Respondents

...

Mr. S.R.Page for the Appellant in both Appeals.

Mr. Ravi G. Shinde I/by Mr. Sujay H. Gangal for the
Respondent No.1 in Appeal No.1253/2005.

Ms. P.N.Dabholkar, APP for State in both appeals.

**CORAM : SANDEEP K. SHINDE J.
DATE : 7TH DECEMBER, 2018**

ORAL JUDGMENT :

Both these appeals are preferred under Section 378 of the Code of Criminal Procedure, 1973 against the order of acquittal dated 27th April, 2005 passed in SCC No.324 of 1998 and SCC No.325 of 1998 by the Court of Judicial Magistrate First Class, Pune whereby Respondents (Original Accused) were acquitted of the offences punishable under Section 138 of the Negotiable Instruments Act, 1881 and Section 420 of the Indian Penal Code, 1860. The Appellants (Complainant) and the Respondents-Accused in both the cases are the same. That both the cases were decided and disposed of by the learned Magistrate on one and the same set of evidence and, therefore, both these appeals are taken up for hearing together and disposed of by this common judgment.

2 The complainant, M/s. Biharilal Mantri is a (Hindu Undivided Family) firm. Mr. Premasukhlal and Sohanlal are the co-owners of the said HUF and were managing the business of

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it. Accused runs business in the name and style as 'M/s.Namosha'. The complainant and the accused were knowing each other. It is out of acquaintance and business relations, the accused requested the Complainant for loan of Rs.5 Lakhs for a short period and assured to repay the same within three months with interest. The Complainant thus paid Rs.5 Lakhs to the accused and against the same, as a security, accused had issued six cheques, drawn on Mahesh Sahakari Bank Ltd., Pune. Five cheques were of Rs.1 Lakh each towards the principal repayment of the loan; cheque of Rs.10 Lakhs was towards the interest. Cheques were deposited for negotiation on 21.10.1997 but were returned unpaid as its payment was stopped by the drawer. The Complainant thus issued statutory notice on 22nd December, 1997. It was replied by the accused on 31st October, 1997. That since amount was not paid within 15 days from the date of issuance of notice, complaint was filed on 16th January, 1998.

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3 Before adverting to the evidence, it may be stated that accused in reply to statutory notice dated 13th December, 1997 had stated that entire loan was repaid by him including the interest and, therefore, as on the date of presentation of the cheques, there was no subsisting legally enforceable liability. The learned trial Judge acquitted the accused, as Complainant had admitted his brother's signature on vouchers at Ex.49 to 67 duly acknowledging repayment of loan. I have gone through the cross-examination of P.W.1. This witness was shown the vouchers at Exhibit 49 to 67 which were bearing signatures of the complainant's brother duly acknowledging repayment of loan in between 24th October, 1997 and 2nd December, 1997. In cross-examination, the Complainant stated that; thus “Signature on the receipt dated 24.10.1997 is similar to my brother's signature. Signatures on receipt are similar to signature of my brother and same have been obtained fraudulently”.

4 The learned counsel appearing for the Appellant would submit that the learned Trial Judge at the instance of the complainant, obtained the report of hand-writing expert and report shows signatures on that payment vouchers at Sr.Nos.49 to 67 were not in the hand-writing of his brother. It may be stated that brother of the complainant is not alive and, therefore, the Complainant examined himself as witness no.1. The learned counsel would submit that the learned Trial Judge ought to have considered the report of the expert which is at Exhibit 148 which corroborates complainant's evidence and negates the defence of the accused. I have gone through the said report dated 29th January, 2001 submitted by DU Assistant State Examination of the CID, Maharashtra State, Pune. In his opinion, documents at Exhibit Q-1 to Q-19 were not in hand-writing of the person who wrote the signatures. As against this, there is another report at the instance of the accused submitted by Mr. Anil Mathur examiner from Forgery Detection Private

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Bureau at Exhibit 148 dated 2.3.2001. Mr. Mathur opined that the signature on the questioned documents i.e., 19 vouchers bear signature of Sohanlal B. Mantri.

5 The learned counsel for the Appellant therefore, urged that the Trial Court committed an error in ignoring report of officer of the Chief State Examiner Office. He would submit that report has established the fact that the vouchers at Sr.No.49 to 67 does not bear the signature of his brother and as such, defence of the accused that the entire amount was repaid by him to the complainant could not have believed. He would, therefore, urge that initial burden has been discharged by the Complainant. He would further submit that since the accused had issued the cheques and unless the contrary is proved, it is to be presumed that the Complainant had received the cheque for discharge of debt/liability.

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6 Admittedly, the report of the hand-writing expert, Mr. Pandit was disputed by the accused. Admittedly, there is yet another report on record at the instance of the accused. Both the experts have given cotradictory opinions about the signature of the brother of the complainant on the acknowledgments. In the given set of facts since accused had disputed the opinion of hand-writing expert Mr. Pandit, the complainant ought to have examined Mr. Pandit to prove the contents of the said report.

7 Thus, considering the evidence on record, in my view, the learned trial Judge has rightly excluded the report of hand-writing expert from consideration. Be that as it may, the fact remains that P.W.1 had admitted in cross-examination that signatures on vouchers at Sr.No.49 to 67 were similar to the signature of his brother, but were obtained by practising fraud. I have gone through the vouchers. One of the vouchers dated 24.10.1997 for Rs.10,000/- mentions cheque no.74326. This

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cheque was dated 21st October, 1997 which was dishonoured. Whereas voucher bore date of 24th October, 1997. It clearly probabalises defence of the accused that he had repaid the loan in between 24th October to 2nd December, 1997. It also fortifies the fact that cheque no.74326 was drawn and given by accused to complainant as a security. These vouchers acknowledgment show the principal and the interest amount was repaid and received by brother of the accused on behalf of the firm. The subject dishonoured cheques were drawn on 21.10.1997. Chronology of the events has, therefore, established the fact that the cheques were drawn by the accused on 21.10.1997 towards security for repayment of loan and interest. Evidence has probablised the defence of the accused that they had repaid the amount to the brother of the complainant between 24.10.1997 and 2.12.1997 as evident from vouchers at Ex. 49 to 67. Therefore, the learned trial Judge has rightly held that as on date of presentation of subject cheques, there was no subsisting legally enforceable debt payable by the accused to

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the Complainant.

8 Thus, there is no perversity in the findings recorded by the learned trial Judge while acquitting the accused. Infact finding is in consonance with the evidence, and thus no interference is called for.

9 In the result, both the appeals fail and dismissed accordingly.

(SANDEEP K. SHINDE, J.)