

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

CRIMINAL APPEAL NO.298/2014

Sandip Dhanykumar Jain

..Vs..

Bhalchandra Achyutrao Dhumal

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

Court's or Judge's orders

Shri R.S. Kurekar, Advocate for the appellant.
Shri V.N. Patre, Advocate for the respondent.

CORAM : Z.A. HAQ, J.

DATE : 27.8.2018.

1. Heard.
2. This appeal under Section 378(4) of the Code of Criminal Procedure is filed by the original complainant to challenge the judgment passed by the learned Magistrate by which his complaint under Section 138 of the Negotiable Instruments Act, 1881 is dismissed and the respondent is acquitted.
3. It is not in dispute that there was some transaction between the appellant and the respondent in respect of sale of vehicle. The respondent claims that the appellant had agreed to sell his vehicle for Rs.5,05,000/- and at the time of agreement the respondent had paid Rs.1,41,000/- to the appellant and Rs.50,000/- were paid to Tanveer who was having custody of the vehicle. According to the respondent, cheque for an amount of Rs.95,000/- was given to the appellant and the balance amount of Rs.2,18,500/- was to be paid to enable the appellant to clear the loan on the vehicle. The respondent claims that he made enquiries

with I.C.I.C.I. bank and gathered information that an amount of Rs.3,22,000/- were payable by the appellant to the bank and, therefore, he negotiated the matter further with the appellant, however, there was no positive response from the appellant and, in these circumstances, the respondent was not liable to pay the amount for which the cheque was issued in favour of the appellant.

4. As the appellant has not disputed that the cheque in question was issued by the respondent to pay the amount in furtherance of the transaction in respect of vehicle, and as the appellant has not pointed out that the breach of contract is on the part of the respondent and as admittedly the vehicle continued with the appellant, I find that the conclusions of the learned Magistrate that the complainant has failed to prove that the cheque in question was issued to pay legally enforceable debt, cannot be faulted with. The learned Magistrate has properly appreciated the evidence on record and the findings recorded by the learned Magistrate do not suffer from any illegality or infirmity necessitating interference by this Court. The appeal is **dismissed**.

5. Considering the facts of the case, the appellant is directed to pay costs of Rs.50,000/- (Rs. Fifty Thousand) to the respondent and produce receipt of it on record of this appeal within four weeks.

JUDGE