

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

CRIMINAL APPEAL NO.208 OF 2018

Bhavani Urban Co-op Bank Ltd.
Georai, Tq. Georai, Dist. Beed
Through Its Recovery Officer -
Pandit Balasaheb Sarjerao,
Age 49 years, Occu: Service,
C/o Bhavani Urban Co-op. Bank
Georai, Tq. Georai, Dist. Beed

... Appellant

VERSUS

1. The State of Maharashtra,
Through : Secretary, Home
Department, Mantralaya,
Mumbai -32.

2. Bhausahab s/o Khanduji Dabhade
Age 40 years, Occu: business,
R/o Dabhade Galli, Georai,
Tq. Georai, District Beed,

... Respondents

Mr. N.L. Jadhav, Advocate for the appellant
Mr. P.N. Kutti, APP for the respondent No.1/State.

CORAM : S.M.GAVHANE, J.

DATED : 02.04.2019

ORAL JUDGMENT :-

1. Heard.

2. Admit, taken up for final hearing with the consent of learned counsel for the appellant and the learned APP for the respondent No.1./State. None present for respondent No.2.

3. The appellant/original complainant has assailed order dated 02.08.2017 passed by the learned Judicial Magistrate First Class (Court No.2) Georai, Dist. Beed in S.C.C. No. 63 of 2010, thereby dismissing the said case of the appellant/complainant and acquitting respondent No.2/original accused of the offence punishable under Section 138 of the Negotiable Instruments Act.

4. Facts giving rise to this appeal, in short, are that, the appellant had filed aforesaid case in the Court of Judicial Magistrate, First Class (Court No.2), Georai on 12/01/2010 for the offence punishable under Section 138 of the Negotiable Instruments Act and Section 420 of the Indian Penal Code against the respondent No.2/accused. After recording verification of the appellant, the learned Magistrate issued process against respondent No.2 under Section 138 of the Negotiable Instruments Act by order dated 26/04/2010. It appears that, thereafter, the complainant filed affidavit in evidence and thereafter respondent No.2 had filed application dated 28/01/2015 before the learned Magistrate requesting to send the disputed cheque for

examination, to the hand writing expert for seeking his opinion on the said cheque. Said application was rejected by the learned Magistrate. Aggrieved by the said order respondent No.2/accused had filed Criminal Revision Application bearing No.33 of 2016 in the Sessions Court at Beed which criminal revision application was ultimately allowed by the Additional Sessions Judge, Beed on 27/09/2016 and the operative part of the order passed by the Additional Sessions Judge, Beed in Criminal Revision Application is as under:

"ORDER

1. The revision petition is hereby allowed.
2. The impugned order passed by learned Judicial Magistrate, First Class, Gevrai, below Exh.63, in Summary Cri. Case No.63/2010 dated 24.02.2016, is hereby set aside.
The application filed by the revision petitioner below exh.63 is allowed.
3. The disputed cheque shall be sent to hand writing expert seeking his opinion on the points-
 - (i) "Whether the hand writing except signature on the disputed cheque, was that of the accused?"
 - (ii) Whether the age of signature on the cheque and the age of writing on the cheque is same?
4. The revision petition is directed to furnish his sample hand writing and deposit the requisite amount for the expenses for seeking expert's opinion before the trial Court.

5. Hearing of the proceeding before the trial Court is expedited and the trial Court is directed to dispose of the Summary Criminal Case No.63/2010 within six months after receipt of the report of the expert.

Needles to mention that stay to the proceeding before the trial Court is vacated.

Inform trial Court accordingly.
Proceeding closed."

5. I have heard the learned counsel for the appellant and the learned APP for respondent No.1. The learned counsel for the appellant has produced copy of Roznama which is taken on record and marked as Exh.'X' for identification.

6. It appears that, thereafter, the copy of the order of Additional Sessions Judge, Beed was received by the learned Magistrate in SCC No.63 of 2010 on 29.04.2017 and thereafter the case was adjourned from time to time for compliance of the order of the Additional Sessions Judge, Beed. More particularly it appears from the Roznama (Exh.'X') that continuously on 29/04/2017, 05/05/2017, 24/05/2017, 16/06/2017, 17/06/2017, 30/06/2017 and 25/07/2017 the case was adjourned for compliance of order Exh.77 of the Revisional Court, but no compliance was made by respondent No.2. The Roznama

further shows that on 25/07/2017 the Court passed order on Exh.1 in the case that no compliance of order of Additional Sessions Court was made and the matter was adjourned to 26/07/2017. Roznama further shows that on 26/07/2017 advocates were not present when the matter was called out and it was adjourned to 02/08/2017. It further appears that on 02/08/2017, respondent No.2 and his advocate were present and the appellant filed application Exh.80 seeking time to adduce evidence, but said application was rejected. Thereafter, the learned Magistrate passed order dated 02/08/2017 dismissing the complaint. The said order runs as under:

"ORDER BELOW EXH.1 IN S.C.C. NO.63/2010.

The complainant and advocate present. The accused and advocate present. Adjournment application of the complainant has been rejected today in first session. As per order below Exh.1 on 25.07.2017, this case was posted for dismissal. Because, this case needs to be expedited by order of Hon'ble Additional Sessions Judge, Beed. It is time bound matter. However, by one and other reason, both parties have not appeared in the case regularly and therefore, no progress in the case has been done. It unnecessarily causes burden on this Court. Despite convenient date given to the complainant, he sought adjournment today for unacceptable ground. Thus, I do not want to keep case pending furthermore for want of effective steps by the complainant. It is dismissed for want of prosecution. The accused is acquitted. His bail bond is canceled."

7. On perusal of the above order impugned in the present appeal it appears that on the date of said order the complainant and his advocate were present. Accused as well as his advocate were present and application of the complainant seeking adjournment was rejected in the first session and as no progress was done in the case and the matter was time bound by the Court of Additional Sessions Judge, Beed the case was dismissed for want of prosecution and the accused was acquitted. As observed earlier right from 29/04/2017 the case was adjourned from time to time for making compliance of the order of the Additional Sessions Judge, Beed by respondent No.2, in Criminal Revision Application No.33 of 2016 and it appears that respondent No.2 did not make compliance. It is pertinent to note that on 02/08/2017 when the complaint was dismissed the complainant and his advocate were present and the appellant sought time to adduce evidence by filing application for adjournment, but said application was rejected by the learned Magistrate. In fact, on the background of adjourning the case from time to time at the instance of respondent No.2 for compliance of order of the Revisional Court, in fact, on 02/08/2017 it was possible for the learned Magistrate to

adjourn the case on the request of the complainant for adducing his further evidence as it appears that the case was already part-heard and therefore the circumstances present in the case were not such that it was not at all possible for the Magistrate to adjourn the case. Therefore, the impugned order of dismissal of the case and acquitting respondent No.2 in the above circumstances was not desirable. Therefore, the impugned order is not sustainable and the same is liable to be set aside by allowing the appeal. In the result, following order is passed.

ORDER

(i) Appeal is allowed.

(ii) The impugned order dated 02/08/2017 passed by the Judicial Magistrate, First Class (Court No.2), Georai, Dist. Beed in SCC No.63/2010 dismissing the said case and acquitting respondent No.2/accused of the offence punishable under Section 138 of the Negotiable Instruments Act is quashed and set aside.

(iii) The SCC No.63/2010 is restored to it's original position and the learned Magistrate is directed to

proceed with the said case from the stage at which it was dismissed, according to law after securing presence of respondent No.2/accused as today at the time of deciding this appeal none present for respondent No. 2/accused and the learned Magistrate is further directed to dispose of SCC No.63/2010 within four months from the date of receipt of this order.

[S.M.GAVHANE, J.]