IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE

CRIMINAL APPEAL NO.431 OF 2002

Sahara India Mutual Benefit Co. Ltd.)….Appellant

V/s.

1. DFA Exports Pvt. Ltd.)
2. Vinod Kumar Pittie)
3. The State of Maharashtra)....Respondents

WITH

CRIMINAL APPEAL NO.433 OF 2002

Sahara India Mutual Benefit Co. Ltd.)….Appellant

V/s.

1. Dharati Finvest (Bom.) Pvt. Ltd.)
2. Kavita Pittie)
3. Vinod Kumar Pittie)
4. The State of Maharashtra)....Respondents

None for appellant.
Ms.Geeta Mulekar APP for the respondent-State.

CORAM : K.R.SHRIRAM,J
DATE : 15.10.2019

P.C.:-

1. When the matter was listed yesterday i.e., on 14.10.2019 and called out twice, none appeared for the appellant. Matter was therefore, stood over to today. Even today nobody is present for the

appellant but with the assistance of the learned APP for respondent - State of Maharashtra, the evidence recorded and the impugned judgment was considered.

2. The complainant had filed two separate complaints and also filed two separate appeals which are clubbed together and both the appeals have been disposed by this common order. The charge against the accused was under Section 138 read with section 141 of Negotiable Instruments Act. The 1st accused is a private limited company and accused nos.2 & 3 are the directors of accused no.1 and at the relevant time were responsible for the conduct of the business of accused no.1. In one complaint the amount involved is Rs.84,50,360/- and in the other complaint it is Rs.18,95,408/-. It is the case of the appellant that it had sold 16800 shares of one M/s.Pittie Cements and Industries Ltd., to accused no.1 in one complaint and sold 74,900 shares of Pittie Cements & Industries Ltd., to accused no.1 in other complaint and cheques given towards the consideration of those shares were dishonoured.

3. Before adverting to the merits of the case, I would like to mention the legal material aspects of the case under Section 138 of the Negotiable Instruments Act. In order to constitute an offence under

section 138 of the N.I.Act, it is required to fulfill or prove that the cheque should have been issued for the discharge in whole or part of any debt or other liability, cheque should have been presented within the period of six months or within the period of its validity, payee or the holder in due course should have issued the notice in writing to the drawer within 15 days from the receipt of information by him from the bank regarding the return of the cheque as unpaid and after receipt of the said notice, the drawer should have failed to pay the said cheque amount within 15 days from the receipt of the notice and on non-payment of the cheque amount of the dishonoured cheque within 15 days of the receipt of the notice by the drawer, then complaint is required to be filed within one month. If all these ingredients are fulfilled, then only the accused can be held guilty for the offence punishable u/s.138 of the N.I.Act. It be noted that section 138 does not run counter to the basic principles of criminal law that an accused must be presumed to be innocent. When an action is taken under section 138 of the N.I.Act, there are certain admitted facts and circumstances in which the law raises a presumption that the accused is guilty. Moreover, there is presumption under sec.139 in favour of the holder of the cheque. Section 138 and section 139 of the N.I.Act are only in consonance with the definition contained in section 4 of the Evidence Act. Section 138 does not exclude the applicability of section 243 of the Code of Criminal Procedure. With this law and bearing in mind the same, I would now like to switch over to consider the merits of the case.

4. The fact that cheques were issued have not been disputed but what clinches the matter in favour of the accused was that shares for which the cheques were given, were never transferred to the accused. The complainant had purchased the shares on behalf of accused and it was the obligation of the accused to take delivery of the shares and pay for those shares. Towards the value of the shares the cheques were given but the cheques were dishonoured and the prices of those shares came down. Probably for that reason the accused did not take delivery of those shares and complainant also did not transfer those shares to the accused. The complainant might have suffered loss but for that, complainant has to file a suit claiming damages. I am sure it would, by now, be grossly barred by limitation. The complainant is also not present to indicate whether such a suit was ever lodged.

5. Therefore, Magistrate was correct in concluding that there was no liability on the part of the accused to pay the price of the shares and the cheques issued do not stand for payment of part or

whole liability on the part of the accused.

6. In [1]***Rohtash Vs. State of Haryana*** the Supreme Court held that the law of interfering with the judgment of acquittal is well settled. It is to the effect that only in exceptional cases where there are compelling circumstances and the judgment in appeal is found to be perverse, the appellate court can interfere with the order of the acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference.

7. In the circumstances, appeals cannot be entertained. Both the Appeals stand dismissed.

(K.R.SHRIRAM,J)

1 (2012) 3 SCC (Cri) 287

KJ