

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

CRIMINAL APPEAL NO.576 OF 2002

Arjun Trambak Karande)....Appellant

V/s.

1. Badrinath nandkishor Laddha)
2. Popat Balkrishna Raut)
3. Madanlal Jainarayan Joshi)
4. State of Maharashtra)....Respondents

None for the appellant.

Ms.Anamika Malhotra APP for State.

Mr.Bhooshan Mandlik i/by Mr.S.S.Patwardhan for respondent no.3.

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 no.4-State of Maharashtra, and Mr.Mandlik for respondent no.3, the evidence recorded and the impugned judgment was considered.

2. The complaint is for prosecution of 3 accused under section 138 of the Negotiable Instruments Act r/w section 420 of IPC.

Appeal as against Respondent no.2 has abated since he has expired. It seems the complainant had deposited sum of Rs.1,77,000/- in the society in which original accused nos.1, 2 & 3 were the Chairman, Manager and Cashier respectively, towards short term deposit. When the complainant approached to the accused to release the short term deposit after expiry of the period of deposit, the accused handed over a cheque for Rs.1,81,860/- towards maturity amount including interest. The cheque came to be dishonoured with remarks "Funds not arranged for". It is stated the complainant re-presented the cheque few times on instructions of the accused but every time the cheque was dishonoured. The complainant therefore, issued a demand notice dated 13.10.1999 through his Advocate. It is alleged the accused avoided to accept service of the notice and therefore, packet has been returned with postal remark to the complainant and no payment has also been made.

3. The process issued itself was recalled on an application by the accused that the complaint was not maintainable. According to the accused the alleged notice issued was on 13.10.1999, on 26.10.1999 it is alleged that the packet was returned with the endorsement "Not claimed" and the complaint was filed on 3.11.1999. As per the application for recalling process, after 26.10.1999 the

complainant should have waited for 15 days before filing the complaint and therefore, the complaint is premature and the process issued should be recalled.

4. Relying on the judgment of the Apex Court in ¹***Shakti Travel & Tours V/s.State of Bihar & Anr.***, Magistrate was pleased to pass an order recalling the process issued.

5. The Apex Court in *Shakti Travel & Tours* (supra), has held that the accused has a right to pay money within 15 days from the date of service of notice and only when he fails to pay, it is open for the complainant to file a case under Section 138 of Negotiable Instruments Act. Based on the records available, it does appear that the complainant had not waited for the mandatory period of 15 days before lodging the complaint. That being the position, the conclusion of the Magistrate cannot be faulted with.

6. In the circumstances, appeal cannot be entertained. Appeal dismissed.

(K.R.SHRIRAM,J)

1 (2002) 9 Supreme Court Cases 415