

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CRIMINAL JURISDICTION
CRIMINAL APPEAL NO. 653 OF 2002**

Mrs. Sushila Vinod Dharod

..Appellant

Vs.

M/s Decent Builders & Ors

..Respondents

Mr. Rajesh Datar for Appellant

Ms Pallavi Dabholkar APP for State

CORAM : K.R.SHRIRAM, J.

DATE : 14th OCTOBER 2019

PC.:

1 Heard Mr. Datar for Appellant and Ms Dabholkar for State.

2 Appellant had filed a complaint under provisions of Section 138 of the Negotiable Instruments Act 1881, against respondent no.1 and its partners, who were four in number when the complaint was filed. Respondent nos.2, 3 and 4 in this appeal were accused nos.2, 3 and 4. There was accused no.5 one Mrs Noorjahan Ismail Patel who was discharged and the same was recorded in the impugned judgment. Respondent nos.3 and 4 have deceased. Respondent no.2 is in jail and Mr. Datar states that he should also be heard. I would have stood over the matter to hear respondent no.2 if I had found atleast prima facie case on merits. I have read the evidence and impugned judgment and this is not a case which requires interference by this court. Hence matter need not be stood over to hear respondent no.2.

3 It is the case of appellant/complainant that pursuant to an agreement of lease, the accused had given three cheques; one for Rs.1,50,000/- and the other two for Rs.50,000/- each. The cheque for Rs.1,50,000/- has been honoured, whereas the other two cheques came to be dishonoured. The crux of the matter is the date of the agreement for lease. According to complainant it is 11-6-1992, whereas the court has come to a conclusion that the agreement of lease is dated 9-6-1994. Admittedly, the complainant and accused had entered into two agreements of lease, one dated 11-6-1992 and the other dated 9-6-1994. After considering the evidence recorded in the matter, the court has rightly come to a conclusion that the cheques issued were towards the agreement of lease dated 9-6-1994. The reason for this conclusion is that all the three cheques including the two dishonoured are dated 15-2-1994 (for Rs.1,50,000/-), dated 10-5-1994 (for Rs.50,000/-) and dated 30-5-1994 (for Rs.50,000/-). The complainant could not produce anything to show that three cheques were towards agreement for lease dated 11-6-1992 and the court came to a conclusion based on the evidence that the cheques which were issued in 1994 could not have been under consideration for the lease dated 11-6-1992. The lease of 1992 came to an end and therefore, a fresh lease of 9-6-1994 was entered into between the parties. The lease dated 9-6-1994 was revoked by the complainant by giving a notice dated 9-6-1994 (Exhibit 89) and in response the accused demanded return of the three cheques by notice

dated 20-6-1994. The court came to a conclusion that in view of the revocation of the agreement for lease dated 9-6-1994 by the complainant, there was no legally enforceable debt or other liability of the accused. Provisions of Section 138 of the Negotiable Instrument Act provides “..... in whole, or part of any debt or other liability” Therefore, even if the cheques are dishonoured, the cheques issued should have been in discharge of any debt or other liability. In this case, the complainant having revoked the agreement of lease, there was no enforceable debt or other liability under the lease deed.

4 In the circumstances, the court was correct at arriving at such a conclusion.

5 Appeal dismissed.

(K.R. SHRIRAM, J.)