IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CRIMINAL JURISDICTION
CRIMINAL APPEAL NO. 602 OF 2003

Shri Anil Narayan Jadhav)
Age 30 years, Occupation)
Contractor, residence at)
Kumbhar Ali, Junnar, District Pune) ..Appellant/Complainant

Versus

1 Shifa Construction Private Ltd.)
Manchar through its proprietor)

2 Shri Arif Hajimiya Shaikh)
Age 40 years, occupation :)
Contractor, residence at Post)
office building Manchar)
Tal Ambegaon District Pune)

3 State of Maharashtra) ..Respondents
(Respondent Nos.1 & 2 Ori-Accused

Mr. S. P. Chavan i/b Mr. R. A. Thorat for Appellant
Mr. U. B. Nighot for Respondent Nos.1 and 2
Ms Anamika Malhotra APP for State

CORAM : K.R.SHRIRAM, J.
DATE : 11th DECEMBER 2019

ORAL JUDGMENT:

1 This is an appeal filed by the original complainant impugning an order and judgment dated 30-6-2001, passed by the Learned Judicial Magistrate First Class, Junnar, Pune, acquitting accused no.2 Mr. Arif H. Shaikh. Accused no.2 was carrying on business as sole proprietor of accused no.1. Therefore, we need to be concerned only with accused no.2

2 It is the case of complainant that due to some transaction between complainant and accused, accused gave a cheque bearing

no.079958 dated 3-1-2000, drawn on Janata Co-operative Bank Pune, Junnar Branch (subject cheque). When complainant deposited the subject cheque in his account with State Bank of India, Junnar Branch, on 6-1-2000, the cheque was returned dishonoured on the ground that funds insufficient in the account of accused. Complainant made attempts to recover the amount from accused, who avoided making payment and hence complainant by his advocate's notice dated 11-1-2000, called upon accused to make the payment. Accused despite the receipt of notice, failed and neglected to make any payment and hence the complaint came to be filed.

3 Accused denied liability in toto and in his statement recorded under Section 313, the stand taken by accused is that he owes no money to complainant, accused and complainant had business relationship and accused used to leave his letter head and rubber stamp and cheque book with complainant and the signature in the subject cheque is not his. Accused also says that complainant has obtained cement from Panchayat Samiti of Village Nimgiti in the name of accused and under that transaction, accused has to pay only Rs.40,000/-. But due to certain other acts and omissions of complainant, accused suffered loss and he has to recover a sum of Rs.4 to 5 lakhs from complainant. The amount recoverable of Rs.4 to 5 lakhs has come in the suggestion made in the cross-examination of P.W.-1.

4 To make good their case, prosecution led evidence of complainant Anil Narayan Jadhav (P.W.-1), Chintamani Gopal Vaijapurkar

(P.W.-2) the Manager of Janata Co-operative Bank and defendants led evidence of one witness Suresh Sakharam Deshpande (D.W.-1), who was working as a tracer in construction department of Panchayat Samiti, Junnar.

5 Having considered the evidence and the records and proceedings with the assistance of Mr. Chavan for complainant and Mr. Nighot for accused, I agree with the conclusions of the Learned Magistrate and I see no reason to interfere in the impugned judgment.

6 P.W-1 in his notice dated 10-1-2000 (Exhibit 25) has stated that due to certain transactions accused gave the subject cheque of Rs.1,30,000/-. In his complaint (Exhibit 1) also the stand taken is due to certain transactions accused gave the subject cheque, but in the evidence in examination in chief, complainant says that accused demanded the amount and he gave him Rs.1,30,000/- and when it came to repayment of that amount, accused gave the subject cheque. This is one inconsistency and I would also say an improvement in the case. Mr. Chavan submitted and rightly so that under Section 139 of the Negotiable Instruments Act, there is a presumption of liability once the cheque is issued. Mr. Chavan also in fairness submitted that presumption is rebuttable and the onus shifts to accused to rebut that presumption. According to Mr. Chavan accused has failed to rebut, and therefore, the Learned Magistrate was wrong and interference of this court is called for.

7 In the cross examination, complainant admits that he has not stated in his complaint that he has lent a sum of Rs.1,30,000/- to accused. This is the translation given to me by Mr. Chavan to paragraph 6, first sentence of cross-examination, which reads “in the complaint (Exhibit 1) fact of giving amount to accused by way of usanwar is not stated by me”. P.W.-1 also states in the cross-examination that he has not stated existence of friendship with accused in the complaint. P.W.-1 says he also has not disclosed an acquaintance of business with accused in the complaint. All these have been stated in his examination in chief.

8 In the cross-examination of P.W-1, it was suggested by counsel for accused that complainant used to purchase cement in the name of accused on the work of Dhalewadi, Nimgiri construction and complainant lifted 10 tons cement in the name of accused for construction on work of Village Nimgiri. P.W-1 does not deny but he says he does not remember whether he had purchased cement in the name of accused for the construction work of village Nimgiri and he does not remember whether he lifted 10 tons of cement in the name of accused for the construction work in village Nimgiri. If complainant has not purchased or lifted, he would have categorically denied that he ever purchased or lifted any cement. The answers of P.W-1 appeared to be very evasive. I am saying this because D.W-1 who is the tracer with the construction department of Panchayat Samiti, Junnar, has stated that the persons receiving delivery of cement bags has signed the register by affixing the rubber stamp of Shifa Construction and

the signatory on the register was Anil Jadhav, who is complainant. The court has also compared the register with the complaint at Exhibit 1 and has recorded that the signature on the register by Anil Jadhav is similar to the signature made on complaint.

9 In the cross-examination, complainant also admits that he has not disclosed in the complaint the date on which he gave any money and the mode of giving such money to accused.

10 In the cross-examination, accused also made suggestions on the basis that Janata Co-operative Bank had been informed by him about the loss of cheque book, but I am not going much into that aspect. The reason is P.W-2, who is the Bank Manager of Janata Co-operative Bank, in his cross-examination states that the signature of accused as per their record varies with the signature of accused in the subject cheque. Relying on this evidence and his own perusal of the cheque under Section 73 of the Indian Evidence Act, the Learned Magistrate has come to a conclusion that complainant has not proved that this cheque was issued by accused.

11 Mr. Chavan relied upon a judgment of a Single Bench of this court (Panaji Bench) in ***M/s. P. V. Constructions Vs. Shri K. J. Augusty***[1] to submit that it was for accused to lead evidence to the contrary to displace the presumption and it was improper on the part of the Learned Magistrate to have done the exercise by himself of comparing the signatures. Instead he should have sent it to a handwriting expert. Mr. Chavan

1. 2006 ALL MR (Cri) 3599

therefore, submitted that the Learned Magistrate erred by comparing the signatures himself. *M/s. P. V. Constructions* (supra) does not help complainant. The facts there were different. In that case, P.W.-2 was working at the relevant time with Federal Bank Ltd., Panaji Branch, on whom the cheque was drawn. P.W.-2 there, had produced specimen card with the consent of the parties, but neither complainant nor accused elicited opinion from P.W.-2 whether the signature of the accused on the cheque was that of the accused himself, compared with the signature on the specimen signature card, which they could have done. The court held that once complainant has asserted that a cheque was given to him by accused duly signed, then it was the onus on accused to have rebutted that presumption. In the present case, opinion of P.W-2 was elicited as to whether the signature of accused on the cheque was that of accused himself. P.W.-2 compared the signature of accused in the subject cheque with the signature of accused in another cheque, which has been honoured by the bank and opined that the signatures do not tally.

12 Mr. Chavan also submitted that the cheque was returned due to insufficient funds and not signature different. For that P.W-2 has explained that when a cheque is presented, the bank would first check whether there was sufficient funds and if funds were insufficient, they would return the cheque on that ground. Only if there was sufficient balance to pay the cheque, the bank would compare the signature. Therefore, this submission of Mr. Chavan does not help complainant.

13 With this background, I have no choice but to conclude that accused has effectively rebutted the presumption under Section 139 of Negotiable Instruments Act.

14 The Apex Court in ***Chandrappa & Ors. V/s. State of Karnataka*** [2] in paragraph 42 has laid down the general principles regarding powers of the Appellate Court while dealing with an appeal against an order of acquittal. Paragraph 42 reads as under :

> *"42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;*
>
> *(1) An appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded;*
>
> *(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;*
>
> *(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.*
>
> *(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.*
>
> *(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."*

2. (2007) 4 SCC 415

15 There is an acquittal and therefore, there is double presumption in favour of accused. Firstly, the presumption of innocence available to the accused under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless they are proved guilty by a competent court of law. Secondly, accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court. For acquitting accused, the Sessions Court in Appeal rightly observed that the prosecution had failed to prove its case.

16 In the circumstances, in my view, the opinion of the Trial Court cannot be held to be illegal or improper or contrary to law. The order of acquittal, in my view, need not be interfered with.

17 Appeal dismissed.

(K.R. SHRIRAM, J.)