

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

CRIMINAL APPEAL NO.807 OF 2002

Ahmedali Moosaji Babrawala)....Appellant

V/s.

The State of Maharashtra & Anr.)....Respondents

None for appellant.

None for respondent no.2.

Ms.Anamika Malhotra APP for respondent no.1.

CORAM: K.R.SHRIRAM,J

DATE : 17.10.2019

P.C.:-

1. On 14.10.2019 this appeal was called out twice but none appeared for appellant. It was stood over to 15.10.2019 but due to paucity of time, could not be taken up, so also on 16.10.2019. Today when the appeal is taken up for hearing, once again appellant is absent. Therefore, this Court perused the evidence and the impugned judgment and the complaint with the assistance of Ms.Malhotra, learned APP appearing for the State.

2. The complaint has been filed impugning the judgment dated 16.12.2000 by which the Additional Chief Metropolitan

Magistrate, 9th Court, Bandra, Mumbai, acquitted the accused on a complaint that was filed by the complainant under the provisions of Section 138 of the Negotiable Instrument Act 1881.

3. It was the case of appellant that appellant had given a loan of Rs.75,000/- to respondent no.1/accused and the amount handed over was in cash. According to appellant, appellant in turn, had borrowed Rs.20,000/- from one friend Almeda, Rs.20,000/- from one Joebbhai and Rs.10,000/- from his brother Saifi. Sum of Rs.20,000/- from himself and Rs.15,000/- was from his wife. I find that the total of these amounts is Rs.85,000/-. According to appellant this amount was handed over in cash to respondent who towards repayment of the loan amount gave a cheque of Rs.75,000/- which came to be dishonoured when presented for payment on the ground of “insufficiency of funds”. Appellant gave notice of dishonour of cheque within 15 days of receiving the dishonoured Memo from the bank, within 15 days thereafter respondent/accused did not pay and within 30 days thereafter the complaint was lodged.

4. It is the case of the accused that the appellant had illegally occupied the premises of the accused and to make the complainant vacate the premises, the accused gave a cheque for Rs.75,000/- to

when he was not legally bound to pay any amount. Therefore, according to appellant there was no legally enforceable debt or liability for which the cheque was issued and hence the complaint was not maintainable.

5. Appellant led evidence of 5 witnesses including himself and the accused led evidence of 3 witnesses.

6. The learned Magistrate accepted the version of the accused and acquitted the accused.

7. I find no infirmity in the judgment.

8. 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

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manner where the other view is possible should be avoided, unless there are good reasons for interference.

9. Though there is a presumption of a legally enforceable debt when a cheque is issued, this is a rebuttable presumption. I would say that still the onus will be on appellant to show that he paid the amount of Rs.75,000/- as loan in cash, in repayment of which a cheque was issued for Rs.75,000/- Appellant claims to have borrowed money from different people to pay accused. In cross-examination he has admitted that there is no proof that he received any such payment and there is no proof that those amounts have been repaid to his brother and friend. Appellant has also not led evidence of those people who had lent money to him to pay the accused to corroborate his case. In this background, Magistrate has accepted the version of the accused and passed the order of acquittal.

10. In the circumstances, I see no reason to interfere with the impugned judgment and order. Appeal dismissed.

(K.R.SHRIRAM,J)