

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

CRIMINAL APPEAL NO.899 OF 2001

Smt.Chatura K.Kshirsagar)....Appellant

V/s.

1) Smt.Tara Arun Dhumal)
2) State of Maharashtra)....Respondents

None for appellant.

Ms.Geeta Mulekar APP for respondent no.2-State.

CORAM : K.R.SHRIRAM,J

DATE : 15.10.2019

P.C.:-

1. When the matter was listed yesterday i.e., 14.10.2019 and called out twice, none appeared for appellant. Matter was therefore, stood over to today. Even today nobody is present for appellant but with the assistance of the learned APP for respondent no.2-State of Maharashtra, the evidence recorded and the impugned judgment was considered.

2. This appeal is filed against acquittal by the original complainant impugning the order of acquittal.

3. The complaint lodged was under the provisions of Section 138 of the Negotiable Instruments Act 1881. According to the complainant, complainant had given loan of Rs.1,00,000/- to the accused pursuant to an agreement dated 28.2.1992. The accused handed over a cheque for Rs.20,000/- dated 30.8.1993 towards part repayment. It is alleged that when the cheque was deposited, it was dis-honoured pursuant to a Memo dated 21.9.1993. The complainant issued demand notice on 2.10.1993 which allegedly was received by accused on 8.10.1993. It is also alleged that accused failed to pay the amount within 15 days of receipt of the notice and hence complaint came to be filed.

4. The accused did not plead guilty. The complainant examined two witnesses and the accused examined herself as PW-1. The defence was a cheque was taken without consent of the complainant and was misused by the accused. The statement under Section 313 of Cr.P.C. was also recorded.

5. The Court came to a conclusion that no case for offence punishable under Section 138 of the Negotiable Instruments Act was proved. The primary reason is : (a) the complainant did not prove the

date on which the demand notice was served on the accused so therefore, limitation cannot be worked out and (b) Assuming the date can be determined from the reply by the accused, still within 15 days thereof the complaint has not been lodged and hence complaint is beyond the time prescribed under Section 142 of Negotiable Instruments Act.

6. I have perused the evidence and the impugned judgment with the assistance of the learned APP appearing for respondent no.2-State of Maharashtra. The appellant in her evidence contended that the notice of demand Exh.25 was issued after receipt of Memo from bank on 2.10.1993. Though a copy of the demand notice was annexed to the complaint, RPAD card from the postal department was not annexed to the complaint or produced. Therefore, there was nothing on record to prove the date on which notice was posted by the appellant. The accused, however, admitted in the evidence that the accused had received a notice but the date of receipt of notice has not come in evidence. The complainant therefore, failed to prove the date on which notice was issued or received by the complainant. The complaint also has been lodged after two months after sending the demand notice.

7. Section 27 of the General Clauses Act 1897 reads as under :-

“27. Meaning of service by post- Where any [Central Act] or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression “serve” or either of the expressions “give” or “send” or any other expression is used, then, unless a different addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.”

Under this provision unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post. What is the time at which the letter would be delivered in the ordinary course of post is a matter of evidence. The onus was on the complainant to lead evidence to the effect as to when the letter would be delivered in the ordinary course of post. I do not find any such evidence having been led, though the Magistrate has presumed it would be 3 days. If it was not 3 days but longer then onus was on the complainant to lead evidence and no such evidence has been led.

Therefore, I cannot find any fault in the conclusion arrived at by the Magistrate.

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

Appeal dismissed.

(K.R.SHRIRAM,J)

¹ (2012) 3 SCC (Cri) 287