

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

CRIMINAL APPEAL NO.890 OF 2002

Nikhil Enterprises & Anand Doors)....Appellant

V/s.

1. Rajit Constructions)

2. State of Maharashtra)....Respondents

None for appellant.

None for respondent no.1.

Ms.Anamika Malhotra APP for respondent no.2-State.

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 complainant claims to have sold certain doors and windows to the accused in consideration of which the accused is supposed to

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have issued a cheque of Rs.17,000/- and the cheque came to be dishonoured with the endorsement "Refer to drawer".

3. The accused has been acquitted on the ground that the complainant failed to prove that there was a legally owed debt or liability to the complainant though it is not disputed that a cheque was issued. Under Section 138 of the Negotiable Instruments Act, in the case of dis-honoured of cheque, the cheque issued should have been for the discharge in whole or any part of any debt or other liability.

4. I have considered the evidence and the complaint and the impugned judgment. The Magistrate is correct in coming to the conclusion that the appellant failed to prove that there was a legal debt or liability. The complainant has relied upon invoices issued by one Nikhil Enterprises and Anand Doors but the cheque issued was in favour of Nikhil Enterprises. No evidence was led to even suggest that both, Nikhil Enterprises and Anand Doors who are the sole proprietary business of the complainant.

5. I do not find any evidence to connect the liability of the accused to Nikhil Enterprises because the complaint is lodged by Nikhil Enterprises and Anand Doors.

6. 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.

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

(K.R.SHRIRAM,J)

1 (2012) 3 SCC (Cri) 287