

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

CRIMINAL APPEAL NO.976 OF 2002

M/s.Rajhans Cloth House)....Appellant

V/s.

1. Annappa Fakira Manjalkar)
2. State of Maharashtra)....Respondents

None for appellant.

Mr.Virendra Pethe i/by Mr.B.D.Joshi 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 and Mr.Pethe appearing for respondent no.1.

2. This appeal is filed against an order of acquittal on a complaint filed by appellant under Section 138 of the Negotiable Instrument Act.

3. It is the case of appellant that the accused purchased goods from appellant on credit and the amount payable was Rs.50,293.95/- . The accused paid Rs.293.95/- and promised to pay balance amount of Rs.50,000/- in 4 to 5 days. On 14.8.1999 accused issued post dated cheque for Rs.50,000/- in the name of complainant which cheque when deposited was dishonoured with the endorsement "Refer to drawer".

4. The complainant issued a statutory notice on 23.8.1999 and the notice was served on 24.8.1999 despite which the amount was not paid and hence the complaint.

5. It is the case of the accused that he had not purchased any goods from the complainant but he used to take loan from the brother of the complainant and he had borrowed sum of Rs.30,000/- and the cheque for Rs.50,000/- was given as security towards repayment of amount of Rs.30,000/-. The cheque given was a blank cheque according to accused. Accused had repaid loan by issuing two cheques

bearing nos.061588 and 061589 and therefore, that loan account has been closed. The complainant instead of returning the security cheque of Rs.50,000/- tried to encash the said cheque.

6. On behalf of the complainant 4 witnesses were examined and as regards the accused, he himself gave evidence.

7. At the outset, it does appear that the complainant failed to prove the notice sent by producing the original of the notice. What was produced is only the photo copy. Moreover, the postal acknowledgment card also has not been produced to prove that notice has been served on the accused. Moreover, the complainant has also not produced any invoice that proves that there was a legally enforceable debt to the complainant because the invoice which has produced does not indicate anywhere the name of the sole proprietary M/s.Rajhans Cloth House and that document did not have any evidence to prove that the complainant had received the goods mentioned in the document.

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

¹ (2012) 3 SCC (Cri) 287

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.

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

(K.R.SHRIRAM,J)