

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

CRIMINAL APPEAL NO.334 OF 2002

Vashdev Bheroomal Pamnani)....Appellant

V/s.

1) Rajani Dilip Rane)
2) State of Maharashtra)....Respondents

None for appellant.

Ms.Anamika Malhotra APP for the respondent-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 the appellant. Matter was therefore, stood over to today. Even today nobody is present for the 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. On earlier occasions, the appellant has not remained present.

KJ

3. The appellant had lodged a complaint for prosecution of the accused under Section 138 of the Negotiable Instruments Act for having issued a cheque dated 30.7.1993 for Rs.30,000/- that was dishonoured for “insufficiency of funds”. The fact that such a cheque was issued has not been disputed. The accused pleaded not guilty and the Court proceeded to record evidence of the complainant/appellant as PW-1 and another witness Ravindra Dattaram Salvi as PW-2.

4. The Court was pleased to acquit the accused on the ground that the complainant did not prove that the complainant had issued demand notice under Section 138(b) of the Negotiable Instruments Act.

5. I have also considered the complaint, evidence and the impugned judgment. This is not a fit case for interference because the Magistrate has rightly come to a conclusion that the complainant who is the appellant failed to prove that demand notice under Section 138(b) was sent.

6. There was a demand notice Exh.9 that was sent by the complainant by Registered Post A.D. but that packet came back

undelivered with the endorsement “not claimed”. The complainant produced postal acknowledgment and empty envelope which was collectively marked Exh.P-7 in which notice Exh.P-9 was sent. The envelope only contained the name of the husband of the accused Mr.Dilip T.Rane, whereas the demand notice Exh.P-9 dated 12.8.1993 was addressed to both, the accused as well as the husband. There is nothing on record to indicate that the demand notice dated 12.8.1993 Exh.P-9 was actually sent in an envelope that was addressed to the accused. The cheque has been drawn by the accused and section 138(b) requires the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the amount in the cheque by giving a notice in writing, to the drawer of the cheque. Therefore, from the documents available on record and the evidence, it cannot be concluded that such a notice was given to the drawer of the cheque i.e., the accused.

7. 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

¹ (2012) 3 SCC (Cri) 287

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.

8. In the circumstances, appeal cannot be entertained. Appeal dismissed.

(K.R.SHRIRAM,J)