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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 521 OF 2019**

Mr. Narayan Radhakrishan Rohra Applicant.

V/s

Mr. Ram Keshavdas Motwani and
Others Respondents.

Mr. Raju S. Motwani for the Applicant.

Mr. Asif Menon i/b Anam Fatima for Respondent No.1.

Mr. S.V. Gavand, APP for the State.

CORAM: NITIN W. SAMBRE, J.

DATE: DECEMBER 10, 2019

P.C.:-

1] The learned Magistrate, Thane vide impugned judgment dated 30/10/2017 recorded acquittal of the Respondent/Accused on the ground that the cheque dated 10/5/2015 was deposited on 19/5/2015 and same was dishonoured on 21/05/2015 about which intimation was received by the Applicant/Complainant on same day i.e. on 21/05/2015. As such, according to him, notice issued by the Applicant to the Accused was not within statutory period of 30 days and that being so, order of acquittal came to be recorded.

2] My attention is invited by the learned Counsel for the Applicant

to the date of dishonour of the cheque which is 21/05/2015. He would submit that it is highly improbable that the Applicant would receive the intimation of dishonour of cheque on the same day i.e. 21/5/2015 on which the cheque was dishonoured. He would submit that the cheque was dishonoured on 21/5/2015 and notice issued to Respondent/Accused on 22/6/2015 was within limitation. He would then urge that after the cheque was dishonoured, atleast 2/3 days have been taken in communicating/intimating the Applicant about dishonour of the cheque and that being so, order of acquittal recorded by the court below is without any basis.

3] While countering the submissions, learned Counsel for Respondent/Accused would strenuously urge that it is the complainant who has admitted that he got intimation on 21/5/2015 about dishonour of cheque and that being so, limitation for issuance of statutory notice ends on 20/06/2015, whereas notice was issued on 22/6/2015 which is admittedly time barred. He would try to justify the order of acquittal.

4] Considered the submissions.

5] Fact remains that it is not in dispute that the cheque was dishonoured on 21/5/2015. There is no material on record to infer that the complainant has received intimation of dishonour of cheque on the same day. The learned Magistrate has presumed that the complainant has received intimation of dishonour of cheque on the same day i.e. 21/5/2015. In the aforesaid backdrop, observation is made that the statutory notice issued on 22/6/2015 is barred by limitation. The learned Magistrate, of course, was right in observing that it was for the Applicant to demonstrate that he has not received the intimation on 21/5/2015.

6] The issue of onus on the Applicant, of course, is required to be considered, as has been rightly observed by the learned Magistrate. However, that by itself will not prompt the Magistrate to observe that notice issued was not within limitation. It was open to the learned Magistrate to issue court summons to the concerned Officer of the Bank to find out as to the date of receipt of intimation about dishonour of cheque. Apart from above, parties have not brought on record as to on which date the intimation was received by the

Applicant about dishonour of cheque.

7] In the aforesaid backdrop, order of acquittal of Respondent/Accused is not sustainable as, in my opinion, a chance is required to be given to the Applicant to meet with the aforesaid shortfall.

8] As such, impugned judgment of acquittal dated 30/10/2017 is hereby quashed and set aside. Parties agree that entire evidence recorded on the earlier occasion shall be maintained as it is and they shall be leading additional evidence only on the issue of intimation received by the Applicant about dishonour of cheque from the Banker of the Applicant. The learned Magistrate in the aforesaid background will be at liberty to put the parties to terms, so that the matter is expeditiously decided.

9] Application is partly allowed in the aforesaid terms and disposed of.

(NITIN W. SAMBRE, J.)