

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1204 OF 2004**

Shankar Jaganath Mane)
Age 65 years, Occ.: Agriculture,)
R/at. Nagthane, Taluka – Tasgaon,)
District – Sangli)Appellant/Complainant

V/s.

1. Sikkandar Mohammed Bidiwala)
Age : Adult, Occ.: Business,)
R/at. Fatima Manzil, Near Yeshwant Sahakari)
Bank, Miraj, District – Sangli)
2. The State of Maharashtra)Respondents/Accused

Ms. Heena Suvarnakar i/b. Mr. Kuldeep S. Patil for appellant.
Ms. Shaina Pratap, Advocate appointed as Amicus Curiae.

**CORAM : K.R.SHRIRAM, J.
DATE : 2nd MARCH 2020**

ORAL JUDGMENT :

1 This is an appeal impugning an order and judgment dated 23rd March 2004 passed by the Chief Judicial Magistrate, Sangli, acquitting respondent (accused) of offence punishable under Section 138 (*Dishonour of cheque for insufficiency, etc., of funds in the account*) of the Negotiable Instruments Act, 1881 (the said Act).

2 On 24th February 2020 since nobody was present in Court representing respondent, the Court appointed Ms. Shaina Pratap, Advocate, as Amicus Curiae.

3 It is the case of complainant that he had given loan of Rs.90,000/- to accused because accused was in need of money and the amount of Rs.90,000/- was to be repaid within 30 days. It is alleged that

accused also executed a promissory note dated 30th September 1995 and accused kept on evading repayment. It is complainant's case that accused finally gave a cheque dated 19th April 1997 which cheque when deposited was dishonoured. This is the case that complainant has gone to the Court with.

4 Complainant issued notice on 28th April 1997 under Section 138 of the said Act to which a reply was given by accused on 20th May 1997 denying liability. Hence, the complaint was filed. Process was issued. Accused pleaded not guilty and claimed to be tried.

5 Prosecution to prove its case, led evidence of 4 witnesses. Defence led evidence of 2 witnesses, including the son of accused. It is the case of the defence that complainant and his brothers promised accused/his son (DW-2) of agency of Mahanagar Gas for which a security deposit had to be given. DW-2 expressed his inability to raise funds for security deposit and complainant agreed to give Mahanagar Gas the security deposit on an understanding that 60% of the profit will be given to complainant. On 29th September 1995, DW-2 was called to the house of complainant from where he was taken to Sangli Urban Co-operative Bank, Industrial Estate, Branch Sangli, where complainant's nephew Subhash Mane (PW-4) obtained a demand draft for Rs.85,335/- in favour of Mahanagar Gas and asked DW-2 to give a blank cheque and blank stamp paper signed as security for the amount. Since DW-2 did not have a bank account in his name, he requested his father (accused) to give a blank cheque as well as blank bond. The

cheque given was blank except containing the signature of accused and also the Rs.10/- stamp paper was blank except containing the signature of accused. It was told by complainant and his nephew that the cheque will not be presented at all because it was only a security cheque. It seems, the cheque was deposited dishonestly almost 2 years later just to harass accused. According to accused, in any event, if any amount was payable, that was payable by his son and not him.

6 The Trial Court after considering the evidence, acquitted accused. The Apex Court in ***Ghurey Lal V/s. State of U.P.***¹ has culled out the factors to be kept in mind by the Appellate Court while hearing an appeal against acquittal. Paragraph Nos.72 and 73 of the said judgment read as under:

72. The following principles emerge from the cases above:

1. The appellate court may review the evidence in appeals against acquittal under sections 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.

2. The accused is presumed innocent until proven guilty.

The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that trial court was wrong.

73. In light of the above, the High Court and other appellate courts should follow the well settled principles crystallized by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

1. (2008) 10 SCC 450

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:

i) The trial court's conclusion with regard to the facts is palpably wrong;

ii) The trial court's decision was based on an erroneous view of law;

iii) The trial court's judgment is likely to result in "grave miscarriage of justice";

iv) The entire approach of the trial court in dealing with the evidence was patently illegal;

v) The trial court's judgment was manifestly unjust and unreasonable;

vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/ report of the Ballistic expert, etc.

vii) This list is intended to be illustrative, not exhaustive.

2. The Appellate Court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.

The Apex Court in many other judgments including ***Murlidhar & Ors. V/s. State of Karnataka***² has held that unless, the conclusions reached by the trial court are found to be palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, Appellate Court should not interfere with the conclusions of the Trial Court. Apex Court also held that merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a

2. (2014) 5 SCC 730

different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view.

We must also keep in mind that there is a presumption of innocence in favour of respondent and such presumption is strengthened by the order of acquittal passed in his favour by the Trial Court.

The Apex Court in *Ramesh Babulal Doshi V/s. State of Gujarat*³ has held that if the Appellate Court holds, for reasons to be recorded that the order of acquittal cannot at all be sustained because Appellate Court finds the order to be palpably wrong, manifestly erroneous or demonstrably unsustainable, Appellate Court can reappraise the evidence to arrive at its own conclusions. In other words, if Appellate Court finds that there was nothing wrong or manifestly erroneous with the order of the Trial Court, the Appeal Court need not even re-appraise the evidence and arrive at its own conclusions.

7 At the cost of repetition, complainant's case he lent Rs.90,000/- to accused because accused was in need and in repayment of loan of Rs.90,000/- accused gave a cheque bearing no.115796 on 19th April 1997. But the indisputable fact is that in Exhibit 46, which is the promissory note, the same cheque number 115796 is referred to and the promissory note is dated 30th September 1995. Therefore, it is quite clear that the cheque was given on 30th September 1995 otherwise the cheque number cannot be written in a document almost 20 months before the date of the cheque.

3. 1996 SCC (cri) 972

8 In the evidence of DW-1 – Anil Babasaheb Patil (working in Sangli Urban Bank), it has come on record that on 29th September 1995, a demand draft was presented to their bank in the name of Maharashtra Organic Chemicals Limited, Pune (MOCL) and the amount was Rs.85,335/-. This amount of Rs.85,335/- was withdrawn from savings account no.2701 and the slip for the demand draft was signed by Subhash Jagannath Mane, who is the son of PW-1. Ms. Suvarnakar states that the signature was of Subhash Dyandeo Mane (PW-4). Even the promissory note relied upon by complainant refers to the gas agency. The reply to the notice sent by accused contains all these points, but complainant is silent about that in the complaint and only says accused wrongfully denied liability. Therefore, it is quite clear that there was no money given in the hand of accused because accused was in need of money but this was towards security deposit for taking the gas agency from MOCL. There is no explanation whatsoever in the complaint as well as in the notice as to how the cheque, which is dated 14th September 1997, finds a mention in a bond dated 29th September 1995. On the contrary, the stand taken in the complaint is repayment cheque no.115796 for Rs.90,000/- was given on 14th September 1997, which is an incorrect statement.

9 Ms. Pratap also submitted that even though under Section 139 of the said Act, there is a presumption that the cheque was for the discharge of a debt or other liability, that is a rebuttable presumption and the standard of proof for rebuttable presumption is that of preponderance of probabilities.

Ms. Pratap submitted that to rebut the presumption, it is open for accused to rely on evidence led by him or accused can also rely on the materials submitted by complainant in order to raise a probable defence and accused need not step into the box in support of his evidence (*Basalingappa V/s. Mudibasappa* ⁴).

10 Though the Trial Court has acquitted accused on the basis that complainant did not prove that there was legally enforceable debt or liability, I am going to dismiss the appeal on the basis that complainant was economical with truth and came with tainted hands and any party coming to Court should come with clean hands and speak the truth. The observations of the Hon'ble Supreme Court in *S.P. Chengalvaraya Naidu V/s. Jagannath (Dead) by LRS* ⁵ are relevant in this context. The Court observed :

The Courts of law are meant for imparting justice between the parties. One who comes to the Court must come with clean hands We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation.

The Apex Court also observed in paragraph 6 of the said judgment that :

A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another.

11 The Apex Court and this Court have, on many occasions, stated that if a party comes to the Court with unclean hands, which in this case plaintiffs have, the party should be dealt with very strongly and substantial

4. 2019 (5) SCC 418

5. (1994) 1 SCC 1

costs also should be imposed on the party. The conduct of complainant intends to impede and prejudice the administration of justice. Judiciary is the bedrock and handmaid of orderly life and civilized society. In ***Sciemed Overseas Inc. V/s. BOC India Ltd.*** ⁶, the Apex Court has lamented about the unhealthy trend in filing of affidavits which are not truthful. Paragraph 2 of the said judgment reads as under :

2. A global search of cases pertaining to the filing of a false affidavit indicates that the number of such cases that are reported has shown an alarming increase in the last fifteen years as compared to the number of such cases prior to that. This is illustrative of the malaise that is slowly but surely creeping in. This 'trend' is certainly an unhealthy one that should be strongly discouraged, well before the filing of false affidavits gets to be treated as a routine and normal affair.

12 Kuldip Singh, J. (as he then was) in ***S.P. Chengalvaraya Naidu (Supra)*** in paragraph 5 observed :

“5. We are constrained to say that more often than not, process of the Court is being abused. Property- grabbers, tax-evaders, bank loandodgers and other unscrupulous persons from all walks of life find the Court process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation.”

13 In ***Oswal Fats and Oils Limited V/s. Additional Commissioner (Administrator), Bareilly Division, Bareilly*** ⁷, the Apex Court followed the same principal that if a person is found guilty of concealment of material facts or making an attempt to pollute the pure stream of justice, the Court not only has the right but a duty to deny relief to such person.

6. 2016 ALL SCR 370

7. (2010) 4 SCC 728

14 In *Dalip Singh V/s. State of Uttar Pradesh and Ors.*⁸, the Court bemoaned that a new creed of litigants has cropped up who do not have any respect for truth and they shamelessly resort to falsehood and unethical means for achieving their goals. Such a litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief.

It will also be useful to reproduce paragraph 1 and 2 of *Dalip Singh V/s. State of Uttar Pradesh (Supra)*, which read as under :

1. For many centuries Indian society cherished two basic values of life i.e. "satya" (truth) and "ahimsa" (nonviolence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final. "

On the ground that complainant did not come with clean hands to the Court, this appeal requires to be dismissed.

15 In a recent judgment of the Apex Court in *ABCD V/s. Union of India*⁹, the Court held that if applicant does not disclose all material facts

8. (2010) 2 SCC 114

9. (2020) 2 SCC 52

fairly and truly but states them in distorted manner and misleads Court, then Court has inherent power to protect itself and prevent abuse of its process and refuse further examination of case on merits. If Court does not reject petition on that ground, it is failing in its duty. Such application requires to be dealt with as contempt of Court for abusing process of Court. Any person who makes attempt to deceive Court, interferes with administration of justice can be held guilty of contempt of Court. Anyone who takes recourse to fraud, deflects the course of judicial proceedings or if anything done with oblique motive or any publication with intent to deceive Court or made with intention to defraud, same is contempt as it would interfere with administration of justice. Concealment of material facts is jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction.

On facts of that case, notice was issued to petitioner in suo motu exercise of power as to why action for contempt be not initiated and appropriate direction be not passed under Section 195 (1) (a) (i) of Code of Criminal Procedure. In our case, as the matter is very old, I am not taking any further action against complainant.

16 There is an acquittal and therefore, there is double presumption in favour of accused. Firstly, the presumption of innocence available to accused under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, accused having secured acquittal, the

presumption of his innocence is further reinforced, reaffirmed and strengthened by the Trial Court. For acquitting accused, the Trial Court observed that the prosecution had failed to prove its case.

17 In the circumstances, in my view, the opinion of the Trial Court cannot be held to be illegal or improper or contrary to law. The order of acquittal, in my view, cannot be interfered with. I cannot find any fault with the judgment of the Trial Court.

18 Appeal dismissed.

19 High Court Legal Services Committee to award fees of the learned Amicus Curiae fixed at Rs.5,000/-.

(K.R. SHRIRAM, J.)