

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL APPLICATION NO.215 OF 2015**

Monica Sachwani	]	
Age: 58 years, Occupation: Advocate	]	
Address: P.W.D, 30/01,	]	
Pimpri Camp, Pimpri, Pune – 411 017.	]	Applicant

Vs.

1.	Charushila D. Nanaware	]	
	Age – 44 years, Occ. Service,	]	
	Address: Sahil Residency, B Wing,	]	
	Flat No.9, Moshi Pradhikaran,	]	
	Pune – 411 018.	]	
2.	The State of Maharashtra	]	Respondents

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Ms. Monica Sachwani, Applicant in person.

Mr. Abhaykumar Apte, for Respondent No.1.

Mr. A.A. Palkar, for Respondent No.2-State.

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CORAM : PRITHVIRAJ K. CHAVAN, J.

RESERVED ON: 3RD JANUARY, 2020.

PRONOUNCED ON: 7th JANUARY, 2020.

P.C:

By this application, the applicant has prayed for special leave to appeal against the impugned judgment and order of

acquittal dated 20th February, 2015 passed by the Judicial Magistrate First-Class, Pimpri, Pune in S.C.C No.362 of 2010 by which respondent No.1 came to be acquitted of the offence punishable under section 138 of the Negotiable Instruments Act, 1881 (for short 'N.I. Act').

2. A few facts germane from the decision of this application can be summarized thus:

The applicant is a practicing Advocate at Pimpri Court, Pune. The respondent No.1 is a teacher (now retired). On 3rd June, 2009, the respondent No.1 approached the applicant for availing her legal services and to represent her in the office of Maharashtra Housing Area Development Authority (for short 'MHADA'), Pune and also for claiming her share in the Fixed Deposit at Kharalwadi, Post Office Pimpri, Pune and other rights of the respondent No.1 in some movable and immovable property, the documents of which are in possession of the husband of the respondent No.1. After due consultation, professional fees and other expenses were agreed to be paid to her to the tune of Rs.5,00,000/- (Rs. Five Lakhs only). The said fees were to be payable after due compliance of all the work assigned to the applicant by the respondent No.1.

3. Since the respondent No.1 did not possess sufficient amount towards fees, she had paid a token amount of Rs.450/- (Rs. Four Hundred Fifty only) to the applicant, pursuant to which, the applicant issued her a receipt. A Vakalatnama came to be executed which was signed by the respondent No.1 and her daughter. The respondent No.1, *inter alia*, claimed her share in a house property from her husband. A promissory note came to be executed by the respondent No.1 on 16th September, 2009 along with two post-dated cheques bearing No.993761 and 993762 in the sum of Rs. 2,50,000/- each of the Seva Vikas Co-operative Bank Ltd., Nehru Nagar Branch, Pimpri. It was agreed upon that the applicant would deposit the subject cheques in the month of December only after the respondent No.1 receives her dues of 6th Pay Commission.

4. However, when the cheques were deposited on 30th December, 2019, those were dishonoured with a remark of the Bank "Referred to Drawer".

5. Admittedly, a statutory notice dated 8th January, 2010 was duly served upon the respondent No.1 within limitation and due to its non compliance, the applicant filed a complaint in the Court of Judicial Magistrate First-Class, Pimpri against the

respondent No.1 under section 138 of the N.I Act. After recording the evidence of the complainant and after going through the documents on record, the learned J.M.F.C, by the impugned order, acquitted the respondent No.1 of the offence punishable under section 138 of the N.I Act.

6. I heard Ms. Monica Sachwani, the applicant in person who is also a practicing Advocate and Mr. Apte, learned Counsel for the respondent No.1. I have also meticulously perused the evidence and the impugned judgment.

7. Indubitably, services of the applicant were solicited by the respondent No.1 and her daughter, meaning thereby, they had engaged the applicant as their Advocate to act, plead and to defend the cases *qua* movable and immovable properties which is evident from the Vakalatnama **Exhibit 28**. Undisputedly, the Vakalatnama was signed by the respondent No.1 as well as her daughter Nandini Nilesh Pawar and also by the applicant. *Prima facie*, there was a privity of contract between the applicant and the respondent No.1. The contention of the respondent No.1 that her signature was obtained fraudulently does not appeal to one's mind for the simple reason that the respondent No.1 is a teacher and not an illiterate

person, who not only signed the Vakalatnama alongwith her daughter but also issued two cheques in favour of the applicant.

8. **Exhibit 59**, the counterfoil of the receipt appears to have been issued by the applicant to the respondent No.1 in lieu of acceptance of Rs.450/- as a token towards her professional fees. The receipt further indicates that an amount of Rs.5,00,000/- was balance and due towards the respondent No.1. This receipt is dated 3rd June, 2009. The cheques in question are dated 30th December, 2009.

9. **Exhibit 29** is a very important documentary evidence which appears to be a letter-cum-undertaking given by the respondent No.1 to the applicant in Marathi language. The recitals of the said letter reveal that the respondent No.1 had contributed her share while purchasing an immovable property bearing No.105/14, Saint Tukaram Nagar, Pimpri, Pune. The said property was purchased in the name of her husband. The relevant documents *qua* the said property were in possession of her husband. Apart from the immovable property, there is a fixed deposit of Rs.12,40,000/- (Rs. Twelve Lakh Forty Thousand only) in the Kharalwadi Post Office, Pimpari, Pune. The respondent No.1

had contributed in the said amount also which is in her husband's name and so also the relevant papers.

10. Since the respondent No.1 was driven out of the house by her husband who was intending to grab all the movable and immovable properties, despite respondent No.1 having her legal share, the respondent No.1 requested the applicant to help getting her legal share and, therefore, she issued the said cheques in the sum of Rs.2,50,000/- each. The respondent No.1, *inter alia*, requested the applicant to put a date in the month of December, 2009 so that the cheques would be honoured by that time.

11. This vital piece of documentary evidence could not be disproved by the respondent No.1 and, therefore, there is hardly any reason to say that the initial presumption in favour of the holder of the cheque under section 183 of the N.I Act has been rebutted. **Exhibit 29** substantiates the contention of the applicant that there was an agreement between the parties by which the applicant was supposed to assist and help the respondent No.1 in getting her legal rights adjudicated upon before the different Courts and Authorities.

12. A statutory notice which is proved at **Exhibit 27** issued by the applicant to the respondent No.1 further corroborates **Exhibit 29**. In her statement under section 313 of the Criminal Procedure Code, the respondent No.1 admits issuance of subject cheques in the sum of Rs.2,50,000/- in favour of the applicant. Interestingly, it is the defence of the respondent No.1 that the applicant had fraudulently obtained the subject cheques and a blank stamp paper under the pretext of filing those documents in the Court of Civil Judge, Senior Division where husband of the respondent No.1 had filed a Marriage Petition under section 13 (1) (ia) (ib) of the Hindu Marriage Act, 1956 seeking divorce from the respondent No.1. However, in the light of the fact that the respondent No.1 is a well qualified teacher, it sounds incredible that she would part with cheques of such a huge amount, that too, in a Divorce Petition.

13. Question No.16 of the statement under section 313 of Cr.P.C indicates that there was no sufficient amount in her account when the respondent No.1 asked the Bank to “stop payment”. Surprisingly, the answer is I don’t know. It speaks volumes.

14. It was asked as to why the applicant had testified against her, the respondent No.1 answered that she does not know. The fact that there was no sufficient amount in her account when the cheques were presented has also been substantiated by the applicant's witness No.2-Nilesh S. Mokashi, who works in The Seva Vikas Co-operative Bank Ltd., Nehru Nagar Branch, Pune as an Accountant. He admits that when the subject cheques were received in the Bank on 16th December, 2019, there was no sufficient amount in the account of the respondent No.1 to honour the same. To substantiate the said fact, witness Nilesh S. Mokashi tendered the statement of the Bank which is proved at **Exhibit 72**. Undisputedly, by letter dated 7th August, 2009-**Exhibit 74**, the applicant had asked Manager of the Seva Vikas Co-operative Bank Ltd. to stop payment in respect of two subject cheques as she had been allegedly deceived and cheated by the applicant.

15. Learned Counsel for the respondent No.1 drew my attention to **Exhibit 32** which appears to be a statement of the respondent No.1. It is unclear whether it is on oath and was given before any adjudicating authority. It appears to have been given before MHADA Authorities. It reveals that the matrimonial dispute between the respondent No.1 and her husband has been

compromised and settled and, therefore, the MHADA Authority should not act on any of the applications, objections etc furnished before the said Authority on behalf of the applicant. This statement which appears to be dated 8th September, 2009, in strict sense, cannot be said to be sufficient to rebut the presumption.

16. The learned J.M.F.C in the impugned judgment failed to appreciate the evidence in its correct perspective.

17. For the aforesaid reasons, special leave needs to be granted to prefer an appeal against the impugned judgment and order of acquittal. Consequently, the application is allowed.

18. The learned J.M.F.C, Pimpri, Pune shall take steps under section 390 of the Cr.P.C. Upon appearance of respondent No.1, she shall be enlarged on bail on executing a P.R. bond in the sum of Rs.20,000/- with one or two sureties to the satisfaction of the learned J.M.F.C.

19. Let the appeal be registered and thereafter be placed for admission.

[PRITHVIRAJ K. CHAVAN, J.]