

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.633 OF 2005**

Arun B. Mishra)
of Mumbai, Indian Inhabitant,)
Age : 34 years, Occ.: Service, having)
address at Motilal Nehru Nagar, Dr. A.B.)
Road, Worli, Mumbai – 400 018)Appellant/Complainant

V/s.

1. Nilesh Shah)
Sole proprietor of M/s. Vikrant Securities,)
having address at Creek Crest Building,)
7th Floor, Flat No.704, “B” Wing, Model)
Town, Off Four Bungalow, Versova Road,)
Andheri (West), Mumbai – 400 058)
2. M/s. Vikrant Securities)
A proprietary firm, having address at)
Creek Crest Building, 7th Floor, Flat)
No.704, “B” Wing, Model Town, Off Four)
Bungalow, Versova Road, Andheri (West),)
Mumbai – 400 058)
3. The State of Maharashtra)Respondents/Accused

Ms. Radha R. Ved i/b. M/s. Kiran Jain and Company for appellant.

**CORAM : K.R.SHRIRAM, J.
DATE : 4th MARCH 2020**

ORAL JUDGMENT :

1 This is an appeal impugning an order and judgment dated 6th May 2005 passed by the Metropolitan Magistrate 33rd Court, Esplanade, Mumbai, acquitting the 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 Ms. Ved, counsel instructed by M/s. Kiran Jain and Company states that appellant had taken the file from the advocates way back in 2007

and the advocates had also given no objection. Ms. Ved states that when the matter was last listed on 14th July 2017, M/s. Kiran Jain and Company also addressed a communication to appellant stating that the matter is getting listed and it will be taken up for hearing at any time. Ms. Ved states that the letter was returned undelivered with the endorsement “address not known”. Copy of the said letter is taken on record and marked “X” for identification. Ms. Ved states that is the address in the cause title to which the letter was sent and that was the only address available in the records and proceedings.

3 I have perused the records and proceedings as well as the impugned judgment. The Trial Court has passed the order impugned on the ground that the notice given itself was bad in law. I have also considered the complaint and it is correct that in the complaint, a demand has been made for Rs.1,54,852.70 as payable. Accused had issued four cheques for Rs.50,000/-, Rs.32,000/-, Rs.22,997.99 and Rs.12,638.75, totaling to Rs.1,17,636.74. When the cheques were presented, they were dishonoured. In the affidavit of evidence, complainant has said that Rs.1,54,852.70 paise was due and payable but in the cross examination, complainant says after accused sent a reply to his notice, his advocate has mentioned in the rejoinder that total dues were Rs.2,97,705.95 paise and after deducting Rs.75,000/-, the amount due was Rs.1,54,852.70 paise. This is incorrect because the amount would be Rs.2,27,705.95 paise. Complainant further admits that certain payments were made after the cheques were dishonoured but no such details have been disclosed in the complaint.

4 Though the Trial Court has acquitted the 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***¹ 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.

5 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 complainant has, the party should be dealt with very strongly and substantial 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.***², the Apex Court has lamented about the unhealthy trend in filing of affidavits which are not truthful. Paragraph 2 of

1. (1994) 1 SCC 1

2. 2016 ALL SCR 370

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.

6 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.”

7 In *Oswal Fats and Oils Limited V/s. Additional Commissioner (Administrator), Bareilly Division, Bareilly* ³, 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.

8 In *Dalip Singh V/s. State of Uttar Pradesh and Ors.* ⁴, 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.

3. (2010) 4 SCC 728

4. (2010) 2 SCC 114

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. "

9 In a recent judgment of the Apex Court in *ABCD V/s. Union of India* ⁵, the Court held that if applicant does not disclose all material facts 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

5. (2020) 2 SCC 52

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.

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

11 In the circumstances, appeal dismissed.

(K.R. SHRIRAM, J.)