

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1232 OF 2004
WITH
CRIMINAL APPEAL NO.1241 OF 2004**

Mahalaxmi Gas & Essence Mart)
Through Haresh Harabakshrai Dulani)
Age – Adult, Occu.: Business)
R/o. At Bipin Vijay Super Market,)
Burud Lane, Sangli)Appellant/Complainant

V/s.

1. Nitin Mangaldas Ved)
Age – Adult, Occu.: Business)
Prop. Ved Electronics)
Bipin Vijay Super Market,)
Burud Lane, Sangli)
2. The State of Maharashtra)Respondents/Accused

Mr. T.S. Ingale for appellant.

Ms. Akanksha Helaskar i/b. Mr. A.M. Kulkarni for respondent no.1.

Ms. Pallavi Dabholkar, APP for State – respondent no.2.

CORAM : K.R.SHRIRAM, J.

DATE : 6th MARCH 2020

ORAL JUDGMENT :

CRIMINAL APPEAL NO.1232 OF 2004

1 This is an appeal impugning an order and judgment dated 23rd December 2003 passed by the Chief Judicial Magistrate, Sangli, acquitting respondent no.1 (accused no.1) 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 Mr. Ingale, counsel for appellant states that he has not been receiving any instructions from appellant. Mr. Ingale states that when he sent a communication to appellant at his last known address, he got a message

from the person who is in possession of the premises saying that appellant - Mahalaxmi Gas & Essence Mart closed almost 11 years ago and the whereabouts of Haresh Harabakshrai Dulani, who was the proprietor of appellant, is not known. The occupant says for last many years he has been doing some other business which is unconnected to appellant and he does not even know the details of appellant.

3 I have, however, perused the records and proceedings and the evidence. The Trial Court has made two observations for the purpose of acquittal, first one being that complainant was suppressing the truth and secondly, the case of accused that the amount has been paid back in cash is believable because he has shown withdrawals of Rs.50,000/- and Rs.40,000/-.

4 It is settled law that if two views are possible, the Appellate Court should not interfere. The view taken by the Trial Court is a possible view. Moreover, complainant has gone to the Court saying that he had given a loan of Rs.1 lakh. In his cross examination, complainant denies that he stood as a guarantor for a loan that accused obtained in the year 1997 but the documents speak otherwise.

5 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.

6 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 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.

1. (1994) 1 SCC 1

2. 2016 ALL SCR 370

7 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.”

8 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.

9 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.

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

3. (2010) 4 SCC 728

4. (2010) 2 SCC 114

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. ”

10 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 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

5. (2020) 2 SCC 52

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.

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

12 In the circumstances, appeal dismissed.

CRIMINAL APPEAL NO.1241 OF 2004

In view of the above, this appeal also stands dismissed.

(K.R. SHRIRAM, J.)