

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.239 OF 2015

Bharat Raghunath Palavi

..Applicant

Versus

Sandesh Mangal Dongare and Anr.

..Respondents

Ms. Sandhya Mailagir i/by Mr. Anil D. Joshi, for the Applicant.

Ms. Sharmila S. Kaushik, APP for the Respondent – State.

CORAM : NITIN W. SAMBRE, J.

DATE : 8th DECEMBER, 2021

PC.

1. Heard Ms. Sandhya Mailagir, learned counsel for the applicant. While trying to make out case for grant of leave, she would urge that the applicant entered into witness box so as to discharge initial burden thereby examining himself and relying on the cheque dated 14th March, 2012 at Exh.13, Bank returned memo dated 7th May, 2012 at Exh.15, notice dated 5th June, 2012 at Exh.16, returned envelope of cheque at Exh.17 and agreement dated 14th March, 2012 at Exh.18.

2. According to her, applicant having entered into the witness box and prove the issuance of notice which is at Exh.18 and the envelope at Exh.17, the accused/respondent having not cross-examined the applicant has sufficiently established the service of

such statutory notice. Her further contentions are once the notice is posted, as per the General Clauses Act, it has to be inferred to be served as applicant has no control over the said process of serving. She would further claim that by entering into the witness box initial burden to prove the case of issuance of cheque for lawful debt is discharged by the applicant. I have analysed aforesaid submissions in the light of the evidence of the applicant/ complainant.

3. The envelope at Exh.17 containing statutory notice issued under the Negotiable Instruments Act bears an endorsement that the addressee i.e. respondent has gone out of station.

4. Counsel for the applicant was justified in claiming that the notice was posted and sought to be delivered to the respondent/ accused. However, what is contemplated in statute is notice was attempted to be served on the respondent/accused thereby demanding the amount due. The fact that such notice was offered to the accused person is not established from the endorsement on the envelope indicating that the respondent went out of station at the relevant time. Applicant has not examined the postman to demonstrate or establish that such endorsement was in hand writing of the postman, particularly when same is neither signed nor certified by the concerned person i.e. postman or postal authority.

5. In the aforesaid background, inference drawn by the Trial Court on the failure of the applicant to effect statutory notice

(2) -ALP-239-15.doc.

on the respondent/accused appears to be well found which has resulted in the acquittal of the respondent.

6. In that view of the matter, leave is refused.

7. As such, application stands rejected.

[NITIN W. SAMBRE, J.]