

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO. 144 OF 2008

APPELLANT:

(Complainant)

Manoharlal s/o Meghraj Anandani,
aged about 37 years, Occupation – Business,
Resident of Railway Station Road,
Ramdaspath, Akola, Tahsil and District Akola.

... Versus ...

RESPONDENT:

(Accused)

Thavar s/o Rupchand Anandani,
aged about 26 years, Occupation – Business,
Resident of Railway Station Road,
Matruchhaya Nivas, Akola,
Tahsil and District Akola.

Shri A.S. Manohar, Advocate & Shri N.A. Gaikwad, Advocate for the Appellant.
Shri J.B. Gandhi, Advocate h/f Shri B.K. Gandhi, Advocate for the Respondent-sole.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE OF JUDGMENT : 3rd FEBRUARY, 2021

ORAL JUDGMENT:-

The appeal is filed under Section 378 of the Code of Criminal Procedure 1973, the Appellant challenges the legality of the judgment dated 14/01/2008 passed by the Judicial Magistrate First Class, Akola in S.C.C. No.13123/2000. By the impugned judgment, the learned Magistrate has acquitted the Respondent - Accused for offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

02] The Appellant, who shall be hereinafter referred to as the

Complainant, had filed a complaint under Section 138 of the Negotiable Instruments Act against the Respondent, who shall be hereinafter referred to as the Accused. The Complainant had alleged that the Accused had issued a cheque dated 01/02/2000 for an amount of Rs.4,15,000/- towards money payable as per the family arrangement. It was alleged that the said cheque was returned unpaid with an endorsement 'payment stopped'. The Accused did not pay the said amount despite receipt of the statutory notice. This led to filing of the complaint under Section 138 of the Negotiable Instruments Act.

03] The defence of the Accused was that with consent of all the family members, Dulhanomal was appointed as an Arbitrator for effecting partition of the joint properties. Accordingly, the Arbitrator passed an award on 01/01/2000. It was the case of the Accused that at the time of implementation of the award, the Complainant had insisted that a blank cheque be given as security for conveyance and transfer of the share. Accordingly, the Accused issued a blank cheque and handed over the same to the Arbitrator. The Accused claims that the Complainant obtained the said blank cheque from the Arbitrator and misused the same.

04] The Trial Court, after considering the oral as well as the documentary evidence on record, has recorded a finding that the Complainant had failed to prove that the cheque was issued towards discharge of legally enforceable debt and hence, acquitted the Accused for

offence under Section 138 of the Negotiable Instruments Act. Being aggrieved by the said judgment, the Complainant has filed this appeal.

05] At the out set, it may be mentioned that the scope of appeal against the acquittal has been considered by the Hon'ble Apex Court in ***Chaman Lal Vs. State of Himachal Pradesh*** reported in ***AIR 2021 SC 46***. The Apex Court, after referring to the previous decisions, has held thus-

“19. Thus, the law on the issue can be summarised to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the Accused and further that the trial court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference”.

06] In the instant case, the Complainant had come up with a specific case that the Accused was liable to pay a sum of Rs.4,15,000/- as per the family arrangement entered between the members of the family. The subject cheque was issued towards payment of the said amount. The evidence on record reveals that Dulhanomal was appointed as an Arbitrator. The family members had executed a power of attorney in favour of Dulhanomal to effect the partition in respect of family business and joint family properties. The properties were partitioned and business separated as per the Award

dated 01/01/2000. It is not in dispute that the parties have acted as per the Award. In terms of the said Award, Copy of which is placed on record at Exh.136, the Complainant was allotted (i) the business firm M/s. Maharashtra Ice Factory, Khamgaon (ii) One Constructed House Property on which Maharashtra Ice Factory is situated (iii) An amount standing to the credit account in the books of the firm as on 31/12/1999 (iv) One open plot at Mauze Taplabad, Balapur Road, Akola. Whereas, the Accused was allotted the business of the firm M/s Anand Traders, Akola and M/s Jyoti Electricals and Machinery, Akola, land along with constructed godowns at Mauze, Taplabad, Balapur Road, Akola, one flat at Ahuja Apartment, Adarsha Colony, Akola, one shop premises received by Smt. Meerabai bearing Shop No.20 and one shop given to Hemant Roopchand Anandani bearing shop No.21.

07] The award at Exh.135 which was passed by Dulhanomal pursuant to the said power of attorney has been admitted by the Complainant and acting upon it the business has been transferred and dissolution deeds have been executed on 01/01/2000. The said award does not indicate that the Accused was liable to pay to the Complainant a sum of Rs.4,15,000/- and this raises doubt about issuance of cheque towards discharge of existing liability as per the family arrangement. Furthermore, the Complainant has stated that he had received the said cheque in the year 1999. The fact that the cheque was issued prior to the Award probabilises the defence that the

cheque was issued as security for implementation of the Award. Under the circumstances, the view taken by the learned Magistrate is possible and plausible and it is not possible to substitute the same by another possible view.

08] Under the circumstances, the impugned judgment does not warrant any interference. Hence, the appeal is dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)

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