

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

Criminal Application (APPA) No.999 of 2019

IN

Criminal Appeal No. ____/2019

Anilkumar s/o Haridas Wasnik Vs. Kishor s/o Rajeshwar Baghele

WITH

Criminal Application (APPA) No.1000 of 2019

IN

Criminal Appeal No. ____/2019

Smt. Tanuja w/o Anilkumar Wasnik Vs. Kishor s/o Rajeshwar Baghele

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri R.K. Borkar, Advocate for the Applicants.
Shri Tushar U. Tathod, Advocate for the Non-applicants.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : 3rd FEBRUARY, 2021.

The Applicants have filed these applications for grant of leave to prefer the appeal under Section 378(4) read with Section 382 of Cr.P.C., to challenge the judgment dated 17/09/2019.

02] The Applicants claim that they had given hand loan of Rs.1,00,000/- to the Respondent. It is stated that the cheques issued by the Respondent towards repayment of the said loan were dishonoured for insufficient funds. The Respondent did not repay the said amount despite receipt of statutory notice. The Applicants, therefore, filed two separate complaints against the Respondent for offence punishable under Section 138 of the Negotiable Instruments Act.

03] By judgment dated 17/09/2019, the learned Magistrate acquitted the accused in respect of offence under Section 138 of the Negotiable Instruments Act. The learned Magistrate has held that the Applicants have not been able to prove that the said cheques were issued towards discharge of legally enforceable debt. In arriving at the said findings, the learned Magistrate has taken note of the fact that the accused was not known to these Applicants and as such the story of giving hand loan to an unknown person was unbelievable. Learned Magistrate has also considered the statements of the Applicant - Anilkumar (complainant in S.C.C. No.999/2019) that the subject cheques were not handed over by the Respondent - accused but were handed over by CW-2 - Ranjit. The learned Magistrate has also taken note of the admission of the Applicant - Anil Kumar that CW-2 - Ranjit owed certain money to him and he had told him to present the disputed cheques to clear the said transaction. The learned Magistrate, therefore, held that the defence, raised by the Respondent, was probable and hence, acquitted the accused.

04] In the case of ***Babu Vs. State of Kerala*** reported in ***(2010) 9 SCC 189***, the Apex Court has summarised the principles to be followed in an appeal against acquittal under Section 378 of Cr.P.C. as under:

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.

20. The findings of fact recorded by a court can be

held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is “against the weight of evidence”, or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (Vide Rajinder Kumar Kindra v. Delhi Admn., Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons, Triveni Rubber & Plastics v. CCE, Gaya Din v. Hanuman Prasad, Aruvelu and Gamini Bala Koteswara Rao v. State of A.P.)

21. In Kuldeep Singh v. Commr. of Police this Court held that if a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with.

05] Having gone through the impugned judgment, in my view, the learned Magistrate has not committed any error in recording a finding that there were serious infirmities in the evidence adduced by the Applicants and in holding that the cheques were not issued towards discharge of legally enforceable debt. In my considered view, there are no substantial or compelling reasons to disturb these findings, which are neither perverse nor contrary to the evidence and documents on record.

06] Hence, leave to prefer the appeal is declined. The proceedings stand closed.

(SMT. ANUJA PRABHUDESSAI, J.)