

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 447 OF 2017

Uttamrao Kashinath Shinde

...Appellant

Versus

Shivaji Vitthal Jadhav

...Respondent

Mr Sk. Ashraf Patel h/f Mr A.P. Avhad, Advocate for Appellant
Mr R.D. Sanap, Advocate for Respondent/sole

CORAM : SHRIKANT D. KULKARNI, J.
DATE : 25th AUGUST, 2022

PER COURT :

1. This appeal is directed against the impugned Judgment and order of acquittal rendered by the Judicial Magistrate First Class in a case of dishonour of cheque vide SCC No. 391/2019.

2. Heard Mr Sk. Ashraf Patel holding for Mr A.P. Avhad, learned counsel for the appellant and Mr R.D. Sanap, learned counsel for respondent/sole.

3. Mr Sk. Ashraf Patel, learned counsel for the appellant submitted that though the appellant has not produced the bond in question/agreement executed between the parties, it cannot be concluded that the appellant has failed to prove its case of dishonour of cheque when the respondent/accused has admitted the issuance of cheque with his signature. He submitted that the findings recorded by the learned

Magistrate are erroneous. The appellant/complainant has proved his case of dishonour of cheque within four corners of law. The learned Magistrate has committed an error while appreciating the evidence and arrived at incorrect conclusion thereby acquitting the respondent/accused. He submitted that the impugned Judgment and order of acquittal rendered by the learned Magistrate is liable to be quashed and set aside. By alternate submission, Mr Sk. Ashraf Patel submitted that after quashing the impugned Judgment and order of acquittal, the matter may be remanded back to the learned Magistrate for fresh decision so that bond/agreement executed between the parties can be produced and matter can be decided afresh.

4. Mr R.D. Sanap, learned counsel for the respondent/original accused supported the findings recorded by the learned Magistrate. He submitted that there is no error on the part of the Magistrate while acquitting the respondent/accused. No case is made out to interfere in the impugned order of acquittal.

5. Having regard to the submissions of both the sides, I have gone through the impugned Judgment and order rendered by the learned Magistrate in SCC No. 391/2009. The respondent/accused was put on trial for the offence under section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as "the Act" for the sake of convenience) relating to dishonour of cheque of Rs. 2,00,000/-. The appellant/complainant has produced his evidence in support of his case. The transaction between the parties was purchase of cotton and there was one written agreement

between the parties which was foundation of transaction. On going through the impugned Judgment more particularly, para No. 12, it is observed by the learned Magistrate that though the agreement between the parties/bond was important to prove his case, that best piece of evidence was withheld by him. As such, the learned Magistrate constrained to draw adverse inference against the appellant/complainant. The learned Magistrate ultimately concluded in the last para that the respondent/accused has rebutted the presumption available under section 118 and 139 of the Act in support of his defence regarding misuse of blank cheque.

6. Having considered findings recorded by the learned Magistrate, I do not see any error on the part of the learned Magistrate. As pointed out earlier, the agreement between the parties was for Rs.2,00,000/-, which was the foundation for the prosecution case regarding transaction of purchase of cotton. That important piece of evidence was not produced by the appellant/complainant before the learned Magistrate which has resulted in acquittal of the respondent/accused. There is no perversity in the findings recorded by the learned Magistrate while acquitting the respondent/accused.

7. So far as the prayer made by Mr Sk. Ashraf Patel for remanding the case for fresh decision, that is also not permissible to cure the defect. It is too late. Under these circumstances, the appeal must fail.

ORDER

- (I) The Criminal Appeal stands dismissed.
- (II) The impugned Judgment and order passed by the learned Magistrate in SCC No. 391/2019 is hereby confirmed.
- (III) The criminal appeal is accordingly disposed of.

[SHRIKANT D. KULKARNI, J.]

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