

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO.1/2015

MRS. BHARTHI BHANUDAS

GAONKAR,

31 years of age, married,

resident of H.No.60,

Bendurdem, Balli,

Quepem, Goa.

...APPELLANT

Versus

SHRI SURESH VINAYAK AZGAONKAR

alias SURESH MORAJKAR,

major of age, resident of H.No.258,

Belabai, Vasco-da-Gama, Goa.

...RESPONDENT

Mr. Sanman Keny, Advocate U/LAS for the Appellant.

Mr. Rohan Desai, Advocate for the Respondent.

WITH

CRIMINAL APPEAL NO.13/2015

MRS. UJWALA UTTAM GAONKAR

aged 40 years, wife of Shri Uttam Gaonkar,

R/o. H.No.62, Bendurdem, Balli,

Quepem, Goa.

...APPELLANT

Versus

SHRI SURESH VINAYAK AZGAONKAR

alias SURESH MORAJKAR,

major of age, resident of

H.No.258, Belabai,

Vasco-da-Gama, Goa.

...RESPONDENT

WITH
CRIMINAL APPEAL NO.14/2015

MRS. REKHAVATI CHANDRAKANT
GAONKAR, wife of Shri Chandrakant
Gaonkar, aged 49 years,
R/o. H.No.57, Bendurdem, Balli,
Quepem, Goa. ...APPELLANT

Versus

SHRI SURESH VINAYAK AZGAONKAR
alias SURESH MORAJKAR,
major of age, resident of H.No.258,
Belabai, Vasco-da-Gama, Goa. ...RESPONDENT

Mr. Amey Kakodkar, Advocate U/LAS for the Appellants.
Mr. Rohan Desai, Advocate for the Respondent.

CORAM: M. S. SONAK, J.

DATED: 20th January 2022

JUDGMENT:

1. Heard learned counsel for the parties.

2. In Criminal Appeal No.13/2015, Mr. Vivek Rodrigues appears on behalf of the appellant under the Legal Aid Scheme; however, it is reported that he is unwell. Therefore, this Court requested Mr. Amey Kakodkar to appear on behalf of the appellant since Mr. Kakodkar appears in the connected appeal involving an identical issue. Mr. Kakodkar has consented to do

the same and accordingly Mr. Kakodkar was heard even in Criminal Appeal No.13/2015.

3. After these matters were argued for some time, this Court was *prima facie* convinced that the impugned Judgment and Orders acquitting the respondent warranted interference.

4. Before the matters could proceed further, Mr. Rohan Desai, learned counsel for the respondent requested for the matter to be kept in the afternoon session so that he could obtain suitable instructions from the respondent.

5. In the afternoon session Mr. Rohan Desai, based on instructions from the respondent has made a statement that the respondent is ready to pay a sum of ₹75,000/- to the appellants in each of these cases as against the dishonored cheques. In each of these cases, the dishonored cheques were issued in an amount of ₹60,000/-. Mr. Rohan Desai, on instructions, stated that this amount will be paid or deposited in this Court within two months from today.

6. Learned counsel for the appellants are agreeable to receive the aforesaid amount without prejudice to their rights of instituting civil proceedings. They however submitted that now

that the matter has been fully argued, the respondent may be convicted but the conviction can operate w.e.f. 31.03.2022.

7. In this case, the appellants have established beyond reasonable doubt that the cheques in question were indeed signed and issued by the respondent. The presumption under Section 139 of the Negotiable Instruments Act, 1881 (the N.I. Act) was clearly attracted, and from the material on record, this presumption has not at all been rebutted by the respondent. Therefore, the order acquitting the respondent borders on perversity and is liable to be set aside.

8. Learned Trial Judge, in this case, has virtually ignored the provisions of Section 139 of the N.I. Act and proceeded to grant the benefit of the doubt to the respondent on the specious plea that the appellants have not been able to establish clearly how they obtained the amount of ₹60,000/- which they paid to the respondent. If the evidence on record is perused, then, there is oral and documentary evidence that substantially explains how this amount was procured. In any case, once it is established that the cheques were indeed signed and issued by the respondent, the onus was on the respondent having regard to the presumption that arises under Section 139 of the N.I. Act.

9. In this case, the respondent chose not to examine himself. The defence witness (DW1) examined by the respondent has not succeeded in rebutting the presumption that arises in these types of matters. The evidence of DW1 also does not inspire confidence because there is material on record that even this witness was charged with certain offences along with the respondent and the two were together facing prosecution for offences like cheating, etc. There is evidence that even this witness was arrested along with the respondent. Even the respondent raised a defence during the cross-examination of the complainant, the foundation of which was not laid in the reply to the legal notice served after the dishonour of the cheques.

10. Therefore, based on the evidence on record, the appellants have proved the guilt of the respondent beyond a reasonable doubt. The acquittal is based on a misreading of the evidence on record and virtually ignoring the presumption that arises in terms of Section 139 of the N.I. Act.

11. These are compelling reasons to reverse the impugned Judgment and Orders and to convict the respondent.

12. Accordingly, the impugned Judgment and Orders are hereby set aside and the respondent is convicted for the offence under Section 138 of the N.I. Act.

13. Upon hearing Mr. Rohan Desai, learned counsel for the respondent on the point of sentence, I am satisfied that this is a fit case where the respondent should be sentenced to undergo imprisonment of six months and pay a fine of ₹60,000/-. In default, the respondent will have to suffer further imprisonment of one month.

14. The conviction and sentence will however become effective from 31.03.2022. However, if within two months from today the respondent deposits in this Court an amount of ₹75,000/- in each of these appeals i.e. a total amount of ₹2,25,000/-, then, the offence will be deemed to have been compounded and the respondent will not be required to suffer any conviction or sentence. However, if the amount is not deposited within two months, then, the respondent will stand convicted as aforesaid and further, will have to suffer the sentence of imprisonment and fine.

15. It is made clear that though these appeals are being disposed of by a common Judgment and Order, the conviction is

in respect of different and distinct offences, and therefore there is no question of the sentences running concurrently. The offence has been committed by the Respondent against three separate complainants. The respondent will therefore have to suffer the sentences in each of the matters separately, though consecutively.

16. These appeals are disposed of in the aforesaid terms.

17. This Court expresses gratitude to Mr. Sanman Keny and Mr. Amey Kakodkar who appeared in these matters on behalf of the appellants under the Legal Aid Scheme. The Registry to ensure that they are paid the appropriate fees in terms of the rules. Such fees are in addition to the gratitude which the Court expresses to them for their efforts.

18. If the amount is indeed deposited by the respondent, then, the Registry/Legal Services Authority to ensure that this amount is paid to each of the appellants in these appeals as expeditiously as possible.

M. S. SONAK, J.