

THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPEAL NO. 306/2011

**Shegaonkar Associates & Engineering Pvt. Ltd ..Versus...Jog Rubber Products
Pvt Ltd**

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

Court's or Judge's orders

Mr. R.P.Dixit, Advocate for the appellant
Mr. Y.B.Mandpe, Advocate for respondent.

CORAM : AVINASH G. GHAROTE, J.

DATE : 21/06/2022

1] Heard Mr. Dixit, learned counsel for the appellant
and Mr. Mandpe, learned counsel for the respondent.

2] The appeal challenges the judgment dated
24.12.2010 passed by the learned JMFC, whereby the
accused/respondent has been acquitted of the offence under
Section 138 of the N.I. Act.

3] The facts in short are that, the complainant as
well as the accused both are private limited companies. The
complainant claims that the accused company had sought loan
for its business purposes to the tune of Rs.2 lakh for which a
cheque bearing No. 443419 drawn on the HDFC Bank,
Shankar Nagar, Nagpur, dated 20.10.2006 was given to
Respondent company. As against the aforesaid liability, the

accused company is claimed to have issued a cheque bearing No. 035945 dated 27.1.2009 drawn on the Navoday Urban Co-Operative Bank Ltd., Dhantoli, Nagpur, which was presented on 28.1.2009, & was returned back with the endorsement "funds insufficient" under the memo of HDFC bank, dt 29.1.2009. At the instructions of the Respondent, it was again presented on 16.3.2009, whereupon it was again dishonoured for insufficient funds by the bank memo dated 16.3.2009. A notice under Section 138 of the N.I Act came to be issued on 29.3.2009, which was not replied, as a result of which the complaint came to be filed.

4] During the course of the trial, the witness for the complainant, namely Chandrashekar Shegaonkar during his cross-examination has admitted to have received Rs. 16,500/- each on 30.10.2006, 28.01.2007, 28.5.2007, 09.08.2007, 06.02.2007 and 18.4.2008, totalling to Rs. 81,000/-, (para 13, pg 78) which was before the cheque came to be presented for realization. It is thus apparent that as on the date of presentation of the cheque, the amount of the cheque which was Rs. 2 lakh was clearly not due and payable. A plea was raised that the aforesaid amount of Rs. 81,000 was paid by the respondent company to the complainant on account of interest, however it is an admitted position on record that there is no agreement between the appellant and the respondent of any nature whatsoever, so as to indicate any

entitlement of the appellant company for any interest (para 12, pg 78).

5] It is material to note that since the complainant as well as the accused are both private limited companies, therefore, any transaction between them ought to have been evinced by a written agreement. In absence of such a written agreement, the claim of the complainant/appellant of any entitlement to any interest clearly cannot be sustained. Mr.Dixit, learned counsel for the appellant has not been able to point out any other document which would support the entitlement of the complainant to the claim of interest, considering which the dismissal of the complaint by the learned JMFC on the above two grounds cannot be faulted with. I am therefore unable to find any reason to interfere in the judgment by the trial Court. There is no merit in the appeal and the appeal is accordingly dismissed. No costs.

JUDGE

Rvjalit