

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL REVISION APPLICATION NO.277 OF 2007
WITH
CRIMINAL REVISION APPLICATION NO.278 OF 2007**

Iqbal s/o Abba Mohd. Meshwani,
Age : 56 years, Occupation : Business.,
R/o. Nagsen Colony, Opp. Jinsi Police Station,
Aurangabad Dist. Aurangabad. ...Applicant

VERSUS

1. Someshwar s/o Satyanarayan
Age : 41 years, Occu : Business,
R/o. Ganj, Bongir,
Dist. Nalegonda (A.P.), 508 116.
2. The State of Maharashtra
(Copy to be served on Public Prosecutor
of High Court of Judicature of
Bombay Bench at Aurangabad). ...Respondents

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Mr. Shaikh Mohd Naseer & Mr. H.I. Pathan, Advocate for the applicant.

Mr. S.P. Deshmukh, APP for the respondent/State.

Ms. Snehanjali Mohan Nimbalkar, Advocate for respondent no.1.

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CORAM : S.G. MEHARE, J.

RESERVED ON : MARCH 06, 2023

PRONOUNCED ON : APRIL 19, 2023

JUDGMENT :-

1. Heard.
2. The applicant/complainant takes exception to the judgment and order of acquittal of the learned Adhoc Additional

Sessions Judge, Aurangabad dated 23.08.2007 in Criminal Appeals Nos.41 of 2006 and 42 of 2006.

3. Parties to the applications are common; hence, both applications are taken up for disposal together.

4. The applicant shall be referred to as "the complainant and the respondent shall be referred to as 'the accused'.

5. The complainant had filed two separate complaints under Section 138 of the Negotiable Instruments Act against the accused for the dishonour of the cheques bearing no.20170 dated 15.02.2004 for Rs.77,000/- and no.369260 dated 04.02.2004 for Rs.35,000/- each. The statutory notices were served upon the accused. The accused did not comply with the notices. Appreciating the evidence and considering the defence of the accused, the learned Judicial Magistrate First Class held the accused guilty and convicted for the offence punishable under Section 138 of the Negotiable Instruments Act. Dissatisfying with the judgment of conviction, the accused preferred the appeals. The Subordinate Appellate Court, by impugned judgments and orders, acquitted the accused.

6. Learned counsel for the complainant has vehemently argued that the learned Subordinate Appellate Court wrongly recorded the findings that the verification and notices are inconsistent and contrary and create a doubt about the complainant's case. The learned Subordinate Appellate Court did not consider the

presumption under Sections 118 and 139 of the Negotiable Instruments Act. Such legal aspects have been ignored while acquitting the accused. The accused did not deny issuance of the cheques. Once, the accused fails to prove that those cheques were issued as a security, the complainant's case ought to have been believed. The impugned judgments of acquittal are erroneous on the face of record. Hence, warrant interference.

7. Per contra, learned counsel for the accused has vehemently argued that the applicant has no grounds to impugn the judgments and orders of acquittal. The complainant was inconsistent about the money transaction. The learned Subordinate Appellate Court has correctly observed that such inconsistencies create a serious doubt about the genuineness of issuing cheques. Therefore, the defence of the accused was probable under the doctrine of preponderance of probability. The complainant did not prove the legally enforceable debt. It is also the question that whether the revisions lie against the order of acquittal. She prayed to dismiss the petitions.

8. The complainant had brought a case that he and his brother-in-law namely Abdul Aziz runs a business of eggs and dry fish under partnership. The accused used to purchase dry fish on credit from the complainant. Towards the part payment of the outstanding dues, the accused had issued the cheques in dispute. The cheques

were issued towards legally enforceable debt. In his verification statement, he came with a case that he had to receive money from one Abdul Aziz and he has to receive money from the accused. Therefore, the accused issued him the cheques in dispute. He has admitted in his cross-examination that he did not have any personal dues to be recovered from the accused.

9. After having gone through the reasons assigned by the learned Subordinate Appellate Court, there appears substance that the cheques in dispute were not issued directly to the complainant. Material brought on record by way of defence appears probable. Since the complainant had no personal dues against the accused, he cannot claim that he was the holder in due course. The possibility of misusing the cheques in dispute cannot be ruled out. In such an inconsistent plea and having material admissions regarding the dues, it would be difficult to accept that the complainant had to recover the legally enforceable debt from the accused. In the light of the facts of the case, none of the ingredients of Section 138 of Negotiable Instruments Act have been proved. Apparently, the complainant failed to prove the charges against the accused.

10. The learned Subordinate Appellate Court has correctly appreciated the facts and considered the provisions of law and passed the impugned judgments. The complainant failed to point out the

apparent errors on the face of record. Therefore, the impugned judgments and orders do not want interference.

11. As far as the objection as regards the tenability of the petitions is concerned, it was a revision against the judgment passed in the appeal. Therefore, this Court do not find any substance in the objection.

12. For the above reasons, both revision applications do not succeed. Hence, the following order:

ORDER

- (i) Both revision applications stand dismissed.
- (ii) No order as to costs.
- (iii) Record and proceedings be returned to the learned Judicial Magistrate First Class, 3rd Court, Aurangabad.
- (iv) Rule is discharged.

(S.G. MEHARE, J.)