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62.appa.734.2023

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

CRIMINAL APPLICATION (APPA) NO.734 OF 2023
IN
CRIMINAL APPEAL STAMP NO.5129 OF 2023

M/s New Darpan Jewellers through its Prop. Gopal Purshottam Soni
Vs.
Nitin Jayantilal Patel

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

Court's or Judge's orders

Mr. R. R. Chougule, Advocate for applicant.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 04/12/2023

1. By preferring this application along with leave to file appeal against the acquittal.
2. The appellant has challenged the judgment and order of acquittal passed by the 13th Joint Civil Judge Senior Division and ACJM (Special Court – 138) N. I. Act), Nagpur in Summary Criminal Case No.326284/2014 dated 04.05.2023.
3. Learned Counsel for the appellant submitted that learned trial Court has dismissed the complaint only on the ground that there is no seal and signature on the appeal memo issued by the bank.
4. In support of his contention he placed reliance on the judgment of the Delhi High Court in **CRL. M.C. No.4100/2022 and CRL. M.A. No.16919/2022(Stay) Guneet Bhasin Vs. State of NCT of Delhi and anr and ors** wherein Delhi High Court has held

that if the cheque return memo is not bearing any official stamp of the bank, it does not render the cheque return memo as invalid or illegal. The cheque return memo is not a document which is not required to be covered under section 4 of the Bankers Book (Evidence) Act, 1891. If there is any infirmity in the cheque return memo, it does not render entire trial under section 138 of the NI Act as nullity.

5. Learned Counsel for the appellant pointed out from the evidence of the complainant that there was transaction between the complainant and accused and the cheque was issued in discharging the said liability. The cheque was deposited by the complainant and it was dishonoured for the insufficient fund. Thus, the ingredient of Section 138 of the N.I. Act are complied with. He submitted that the present appellant has the arguable points in the present appeal and, therefore, leave be granted.

6. After service of the notice, none present for the respondent.

7. Having heard the learned Counsel for the appellant and on going through the observations of the Delhi High Court, and from the evidence of the complainant and the material placed on record the appellant has made out a case to show that he has arguable points in the present appeal.

8. In view of that, leave is granted. Call for record and proceedings.

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9. After receipt of the record and proceeding,
the appeal be placed for final disposal.

(URMILA JOSHI-PHALKE, J.)

Sarkate