



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

CRIMINAL APPEAL NO. 589 OF 2022

Kusvaah Triveni Prasad

Age: 40 years, Occu.: Business,

R/o. C/o. 60, near Gat no.211,

Riddhi Polymer MIDC,

Ahmednagar.

....Appellant

Versus

Shinde Dattatray Satu

Age: 50 years, Occu.: Business,

R/o. Post. Chikhali Goan,

Tq.Shrigonda, Dist.Ahmednagar.

.....Respondent

.....
Advocate for Appellant : Mr. Sandip Ramnath Andhale

Advocate for Respondent : Mr.D.R. Bhadekar

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 22 MARCH, 2024

PRONOUNCED ON : 02 APRIL, 2024

JUDGMENT :-

1. Original complainant, who instituted proceedings under Section 138 of the Negotiable Instruments Act (the NI Act) against present respondent is taking exception to the judgment and order of acquittal dated 08-03-2022 passed by Additional Chief Judicial Magistrate (Court No.17), Ahmednagar in S.C.C. No.1962 of 2017.

FACTS IN BRIEF

2. Proceedings bearing S.C.C. No.1962 of 2017 was lodged by appellant under Section 138 of the NI Act, setting up a case that he is in the business of supply of wires and other material. On demand of accused, complainant supplied wire and towards the same, accused issued cheque of Rs.4,25,000/- drawn on HDFC Bank. On its presentation for realization and on receiving memo of dishonour, legal notice was despatched, calling upon accused to pay the cheque amount, but having failed to do so, above proceedings were instituted.

Accused appeared on process being issued and resisted the complaint.

After appreciating the oral and documentary evidence, learned Additional Chief Judicial Magistrate, Court No.17, Ahmednagar, dismissed the complaint. Hence, the instant appeal.

SUBMISSIONS

On behalf of appellant :

3. Learned Counsel for the appellant would submit that apparently signed cheque was issued towards purchase of wire. That it was a commercial transaction. That cheque was returned

dishonoured. That there was no specific defence except denial. That all ingredients for attracting offence under Section 138 were available. That initial presumption under Sections 118 and 139 was also made out. That accused could not rebut the same but still learned trial Court erred in acquitting the accused. Learned Counsel for the appellant seeks reliance on decision in the cases of *Triyambak S. Hegde v. Sripad*, 2022 (1) SCC 742 and *Rajesh Jain v. Ajay Singh*, 2023 (10) SCC 148.

On behalf of Respondent :

4. In answer to above, learned Counsel for the respondent would point out that complainant failed to establish legally enforceable debt. That alleged transaction of purchase of wire itself has not been established. That no documentary evidence was placed on record in support of accusation and therefore, learned trial Court rightly acquitted accused.

5. Heard both sides. Perused the record.

6. Proceedings bearing S.C.C. No.1962 of 2017 was registered wherein complainant had come with a case that he is in business of

supply of wire (chain links). On demand of said material, he supplied it and towards price, accused issued cheque of Rs.4,25,000/- but same was dishonoured. In support of such case, apart from his own evidence, complainant seems to have produced on record documents like original cheque in question exh.40, cheque return memo exh.41, legal notice exh.44 and postal acknowledgment receipt exh.43.

7. On visiting evidence of complainant, it is noticed that except deposing and making averments about he to be in business of sale of wires, there is no supporting independent or oral or documentary evidence. Even licence / permit of said business is not placed on record. Even when exactly accused approached to him i.e. on which date and for how much quantity demand was made and how much quantity was supplied has not been demonstrated by complainant by placing originals on record. What seems to have been produced on record are photocopies and hence, same are not exhibited. Merely it is stated that payments were to be made upon mutual understanding and convenience.

ANALYSIS AND CONCLUSION

8. It is fundamental rule that complainant has to prove legally

enforceable debt. Here complainant has not fortified his contentions and averments by placing on record convincing cogent evidence. When very transaction of supply of goods is not established, his case gets knocked at the bottom. For want of foundation, complainant's case gets collapsed. Therefore, even there is nothing to discharge initial presumption also. Having failed to demonstrate legally enforceable debt at the end of accused, fate of complaint gets sealed.

9. Though above citations relied by the appellant are taken recourse to, there is no dispute about settled legal position. How these citations come to the rescue of the appellant has not been explained.

10. After going through the impugned judgment, it appears that learned trial Court has appreciated the available evidence and on finding essential ingredients missing, committed no error in acquitting accused. No illegality or perversity is brought to the notice of this Court. No case on merits being made out, I proceed to pass following order :

ORDER

Criminal Appeal No.589 of 2022 is dismissed.

(ABHAY S. WAGHWASE)
JUDGE