



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION NO.1010 OF 2022

(Surendra Ramprakash Pathak Vs. Arvind Electrotech and anr.)

AND

CRIMINAL APPLICATION NO.1011 OF 2022

(Surendra Ramprakash Pathak Vs. Arvind Electrotech and anr.)

AND

CRIMINAL APPLICATION NO.1015 OF 2022

(Surendra Ramprakash Pathak Vs. Arvind Electrotech and anr.)

AND

CRIMINAL APPLICATION NO.1016 OF 2022

(Surendra Ramprakash Pathak Vs. Arvind Electrotech and anr.)

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

Court's or Judge's Order

Mr. T.S. Deshpande, Advocate for the applicants/appellants.
Mr. S.G. Karmarkar, Advocate for the respondents.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- DECEMBER 12, 2024.

Heard.

2. By these applications, the applicants/appellants are seeking leave to prefer an appeal against the acquittal.

3. Learned Counsel for the appellants submitted that the accused is acquitted merely on the ground that there is no endorsement or seal and signature on the cheque return memo. The trial Court held that the presumption under Section 146 of the Negotiable Instrument Act, would not be helpful to the complainant. The burden lies on the complainant to prove that after the presentation of cheque it was dishonoured for the reason

mentioned in the complaint but the cheque return memo do not bear the official mark of the bank authority and acquitted the accused. In support of his contention, he placed reliance on the decision of the Delhi High Court in ***Guneet Bhasin vs State of Nct of Delhi & anr.*** in ***CRL.M.C. 4100/2022 & CRL.M.A. 16919/2022*** wherein it is held that the Section 138 of the NI Act does not mandate any particular form of cheque return memo which is nothing but a mere information given by the Banker of the due holder of a cheque that the cheque has been returned as unpaid. 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.

4. Whereas learned Counsel for the respondents placed reliance on the decision in the case of ***Smt. Vandana w/o Akhilesh Pandey Vs. Smt. Abhilasha w/o Anil Pande*** decided on 08/08/2018 wherein in para No.10 it is held that :

“10. The said provision states the manner in which a complainant can prove dishonour of cheque. The complainant is required to produce slip or memo having an official mark on it, denoting that the cheque has been dishonoured. If such a

document is placed on record by the complainant it constitutes a prima facie evidence of dishonour and a presumption operates about the fact of the dishonour of cheque, unless and until such fact is disproved. Thus, once such a memo or slip issued by the bank bearing its official mark concerning dishonour of cheque is placed on record by the complainant, the burden is clearly on the accused to disprove the fact of dishonour of cheque.”

5. The aspect argued by the learned Counsel for the respondents can be considered while deciding the appeal. As far as the leave is concerned, at this stage, the appellant has made out a case that he has many arguable points in the present appeal, and therefore, leave is to be granted.

6. Hence, all the applications are allowed and the leave is granted.

7. All the appeals be registered.

CRIMINAL APPEAL (ST.) NO.8991/2022

AND

CRIMINAL APPEAL (ST.) NO.8995/2022

AND

CRIMINAL APPEAL (ST.) NO.8989/2022

AND

CRIMINAL APPEAL (ST.) NO.8993/2022

Heard.

2. Mr. Karmarkar, learned Counsel waives notice for the respondents.

3. Call for R. and P.
4. The appeals can be disposed of at the admission stage.
5. After receipt of the R. and P. appeals be listed for the final disposal.

(URMILA JOSHI-PHALKE, J.)

**Divya*