



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

CRIMINAL APPEAL NO. 560 OF 2002

Nandlal Vasuram Dhanani
Age : 31 yrs, occ : business
R/o Near Laxmi Mata Mandir,
Deolgaon Raja Road, Jalna

Appellant

Versus

1. Shrichand Vasuram Dhanani
Age : 47 yrs, occ : trade
R/o Nath Nagar, SRPF Group
III, Mantha Road, Jalna
C/o Hasmukh Provision, Sindhi
Bazar, Jalna.

2. State of Maharashtra

Respondents

**WITH
CRIMINAL REVISION APPLICATION NO. 307 OF 2009**

Nandlal Vasuram Dhanani
Age : 415yrs, occ : business
R/o Near Laxmi Mata Mandir,
Deolgaon Raja Road, Jalna

Appellant

Versus

1. State of Maharashtra
2. Shrichand Vasuram Dhanani
Age : 58 yrs, occ : business
R/o Nath Nagar, SRPF Group
III, Mantha Road, Jalna
C/o Hasmukh Provision, Sindhi
Bazar, Jalna.

Respondents

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Mr. Rahul Joshi, Advocate for appellant/applicant Nandlal.

Mr. R.D. Raut, A.P.P. for State.

Mr. V.R. Dhorde, Advocate for respondent Shrichand.

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CORAM : SANDIPKUMAR C. MORE, J.

JUDGMENT RESERVED ON : 18 FEBRUARY 2025

JUDGMENT PRONOUNCED ON : 21 APRIL 2025

JUDGMENT :

1. Both these proceedings are filed by one and the same applicant/appellant Nandlal Vasuram Dhanani against his real brother respondent Shrichand Vasuram Dhanani. To avoid ambiguity the parties are referred to their first names. The appellant/applicant Nandlal has filed Criminal Appeal No.560 of 2002 for assailing the judgment and order dated 22.02.2002 passed by the learned 3rd Jt. Judicial Magistrate, First Class, Jalna (hereinafter referred to as “the learned trial Court”) in STC No. 2127/1996 whereby the respondent Shrichand has been acquitted of the offence punishable under Section 138 of the Negotiable Instruments Act (for short, “N.I. Act”). The applicant Nandlal has filed Criminal Revision Application No. 307 of 2009 for challenging the judgment and order dated 07.11.2009 in Criminal Appeal No.6 of 2002 passed by the learned Additional Sessions Judge-2, Jalna i.e. the learned appellate Court, whereby the judgment and order dated 22.02.2002 passed by the learned trial Court in R.C.C. No.359/1996 has been confirmed under which the applicant Nandlal is convicted for the offences punishable under

Sections 465, 467, 468 and 471 of the Indian Penal Code ("I.P.C." for short). Admittedly, the applicant Nandlal has been convicted by the learned trial Court and sentenced to suffer six months' simple imprisonment for the offence under Section 465, rigorous imprisonment for six months and fine of Rs. 1000/- for the offence under Section 467 of I.P.C. Similar punishment for the offence under Section 468 of I.P.C. and six months' simple imprisonment for the offence under Section 471 of I.P.C. It is to be noted that the learned trial Court has passed common judgment in both the cases namely R.C.C. No. 359/1996 and STC No. 2127/1996.

2. The background facts are as under :

R.C.C. No. 359/1996 was filed by respondent Shrichand against the applicant/appellant Nandlal alleging that he had in fact given the disputed cheque bearing No.783718 dated 23.07.1996 drawn on United Western Bank Limited, Branch Jalna to Nandlal for paying electricity bill of Rs.945/-, but Nandlal, instead of paying the said electricity bill, misused the said cheque to show that he was supposed to get an amount of Rs. 12,70,500/- mentioned in the cheque towards remaining amount of consideration which was allegedly agreed between himself and Shrichand for waiving

right in the family business and a shop thereof. When Shrichand became aware of the said fact that Nandlal was intending to misuse the cheque, he immediately informed the bank to stop the payment of cheque. Therefore he filed the aforesaid criminal case against Nandlal for the offences punishable under Sections 467, 468, 466, 471 of I.P.C.

3. On the other hand, Nandlal had filed STC No. 2127/1996 against Shrichand for the offence punishable under Section 138 of N.I. Act since the aforesaid cheque in dispute was dishonoured. In his case, Nandlal alleged that Shrichand had filed Special Civil Suit No. 57 of 1993 against Nandlal and others in respect of rendition of accounts of Raj Kirana Merchant. There was compromise between them in the said suit on 29.06.1996. It was agreed in the said suit that Shrichand and his mother Vindurabai were to continue with the business of aforesaid grocery shop and Nandlal was to execute registered sale deed in respect of his share in CTS No.693. Nandlal had also agreed to hand over premises of the shop to Shrichand alongwith furniture and fixtures. It is contended by Nandlal that in view of the aforesaid settlement, Shrichand had agreed to pay a sum of Rs. 13,00,000/- (Rupees Thirteen Lakh) to Nandlal for waiving Nandlal's entire

right. In pursuance to this settlement, Shrichand then paid an amount of Rs. 29,500/- to Nandlal on 02.07.1996 and on the very day Shrichand had handed over the disputed cheque to Nandlal. Nandlal has come with a case that on 24.07.1996 he presented the disputed cheque in his bank i.e. the Bank of India, but the same was dishonoured with a reason that payment was stopped by drawer. According to Nandlal, there were no sufficient funds in the bank account of Shrichand, and therefore, cheque was dishonoured on 24.07.1996. Thereafter Nandlal issued statutory notice on 01.08.1996 which was received by Shrichand on 05.08.1996. However, despite paying the cheque amount Shrichand gave false and evasive reply on 11.08.1996. As such, Nandlal was constrained to file STC No. 2127/1996.

4. Learned trial Court, after conducting the trial, disposed of both the cases under common judgment which is impugned in the appeal. The trial Court though dismissed STC No. 2127/1996 filed by Nandlal, but convicted Nandlal in the case filed by Shrichand for the offences punishable under Sections 465, 467, 468 and 471 of I.P.C. Hence, Nandlal has filed this appeal as well as Criminal Revision as mentioned above.

5. Learned Counsel for the appellant/applicant Nandlal vehemently submitted that the learned trial Court at first has definitely erred in disposing of the two separate cases under separate Acts by a common judgment. According to him, learned trial Court has also erred in making the observation that the disputed cheque was not in fact issued by Shrichand in view of the compromise took place between them in the aforesaid Special Civil Suit. According to him, the observation that Nandlal was working in Raj Kirana, is not proper. He pointed out that handing over a blank cheque by Shrichand to Nandlal was not in dispute, and therefore, the learned trial court should have presumed that the said cheque was given by Shrichand to Nandlal in view of the settlement only. He further submitted that there was no evidence showing that Nandlal was employee of Shrichand, and therefore, the question for giving the disputed cheque for payment of electricity bill, would not have arisen. He pointed out that there must be different charges for different offence, and therefore, the act of passing common judgment in two separate cases for different charges, is definitely erroneous on the part of the learned trial Court. In support of his submission, he relied on the following judgments :

- (i) *Rohitbhai Jivanlal Patel vs State of Gujarat & anr*
AIR 2009 Supreme Court 1876
- (ii) *T.P. Murugan vs Bojan and Posa Nandhi*
(2018) 8 Supreme Court Cases 469
- (iii) *Rangappa Vs Sri Mohan*
(2010) Supreme Court Cases 441
- (iv) *K.N. Beena vs Muniyappan and another*
(2001) 8 Supreme Court Cases 458
- (v) *Nasib Singh vs State of Punjab and another*
(2022) 2 Supreme Court Cases 89
- (vi) *State of Karnataka vs Hosakeri Nangappa and another*
ILR 2012 KAR 509
- (vii) *Nathi Lal & ors vs State of U.P. and another*
1990 Supreme Court Cases 145

6. On the contrary, learned Counsel for the respondent Shrichand strongly opposed the submissions made on behalf of appellant Nandlal. According to him, Nandlal has misused the disputed cheque and came with concocted story. He pointed out the admission on the part of Nandlal whereby it was accepted that he had in fact written the cheque. As such, in view of the said admission there was no necessity for any expert's evidence. In short, he supported both the impugned judgments and prayed for dismissal of the appeal as well as Criminal Revision Application. He also relied on the judgment of Apex Court in the case of *K. Prakashan vs P.K. Surenderan* reported in *2008 (2) Mh.L.J. 771*.

7. Heard rival submissions. Also perused the impugned judgments and the record and proceedings.

8. Learned Counsel for the appellant/applicant Nandlal raised initial objection that there should be separate trial for distinct offences and there are certain exceptions to this rule and only if a person falls under this exception, joint trial for the offences is to be conducted. For that purpose, he relied on the judgment in the case of *Nasib Singh vs State of Punjab* (supra). However, the aforesaid judgment is not at all applicable in the instant case since in the present matter, the learned trial Court has conducted two separate trials for two distinct offences. It is to be noted that only the subject matter i.e. the disputed cheque is common. Further, the learned Counsel of Nandlal relied on the judgments in the cases of *State of Karnataka vs Hosakeri Ningappa* (supra) and *Nathil Lal vs State of U.P.* (supra), wherein certain observations are made as to how the counter cases are to be tried. Further, in the case of *Nathi Lal* (supra), emphasis laid on the point that each case is to be decided on the basis of evidence placed on record in that particular case only without being influenced by evidence or arguments urged in cross case. However, the learned appellate Court has clearly observed in this matter

that for convicting the appellant Nandlal for the offence of forgery, no evidence of other case falling under Section 138 of N.I. Act has been used.

9. Here in this matter there are no cross complaints, but it can be said that both these cases are based on same subject matter i.e. the disputed cheque. According to the respondent Shrichand, he had handed over blank cheque signed by him to Nandlal for paying electricity bill, whereas Nandlal is claiming that disputed cheque was issued by Shrichand in view of compromise between themselves in the civil suit. Therefore, it appears that the learned trial Court have decided both these cases under a common judgment by holding the trial separately, as it was related to same subject matter i.e. the disputed cheque. There is no such bar in law to decide both the cases by common judgment when it is based on same subject matter. Under such circumstances, the aforesaid cases relied upon by the learned Counsel for the appellant Nandlal, are not applicable in the instant case.

10. On going through the record of both the cases, it is clearly evident that there are two different versions of Nandlal and Shrichand in respect of the disputed cheque. According to Shrichand, he had given the disputed cheque to Nandlal for

paying electricity bill of Rs. 945/-. It was his specific contention that he gave the said cheque only by signing it, leaving other columns empty. He claimed that Nandlal had in fact misused the said cheque and pretended by filling up the same, that it was issued for payment of Rs. 12,70,500/- arising out of settlement between the parties in the civil suit. On the contrary, Nandlal has come with a case in his complaint under Section 138 of N.I. Act that there was settlement between himself and Shrichand in respect of joint business and in the civil suit arising out of that, a compromise had taken place between himself and Shrichand and in view of that compromise Shrichand had agreed to pay him an amount of Rs. 13,00,000/-, and therefore, the disputed cheque for the aforesaid amount was issued. However, on going through evidence on record, it clearly indicates that Shrichand deposed as per the story in his case of forgery and after noticing the fact that the amount of Rs. 945/- was not debited from the account on account of issuance of disputed cheque i.e. on 22.07.1996, he immediately on the next day made enquiry with M.S.E.B. and came to know that electric bill was paid in cash. Therefore, suspecting foul play on the part of Nandlal, he stopped the payment of disputed cheque and thereafter got information that cheque for Rs. 12,70,500/- was received for

encashment on his account, but due to stop payment made by him, it could not be honoured. Further, it has come on record that he immediately after getting knowledge of foul play of Nandlal, registered Crime No. 210 of 1996 under Sections 465, 466, 467, 468, 471 of I.P.C. against Nandlal.

11. Further, in the evidence of the said case of forgery, Shrichand has brought on record important documentary and oral evidence according to which, it has been established that he had issued blank cheque to Nandlal for depositing the amount of electricity bill of Rs. 945/-, but Nandlal misused the same and filled the cheque in his handwriting and pretended that it was issued for the amount of Rs. 12,70,500/-. It is significant to note that the Handwriting Expert's report is also on record at Exh.20. It is extremely important to note that the appellant Nandlal had in fact did not raise any objection for exhibiting the said report (Exh.20), and therefore, now he cannot make complaint that the same was wrong. The said report has established that the disputed cheque was only signed by Shrichand, but the body of the cheque was filled in the handwriting of Nandlal. Further, it is important to note that Nandlal is claiming that under the compromise in Special Civil Suit No. 57 of 1993, Shrichand had agreed to pay a sum

of Rs. 13,00,000/- to him towards goodwill of shop and goods stock in the shop of Shrichand. It is to be noted that certified copy of the terms of compromise in the civil suit is produced on record at Exh.32 in the case of forgery and on going through the same nothing is there to show that it was agreed between the parties that Shrichand was going to pay Rs. 13,00,000/- to Nandlal for goodwill of shop and for goods stock in the shop.

12. Thus, it is clearly established that no such agreement was there at the time of compromise. Further, the witness Govardhan Dhakre examined by Shrichand in the case of forgery has also produced on record two counter foils at Exhs.35 and 36 respectively, out of them counter foil at Exh.36 is having all the significance. The said counter foil definitely indicates that the disputed cheque was in fact issued in blank condition for payment of Rs. 945/- towards electricity bill.

13. Therefore, considering all this evidence in form of documentary as well as oral, respondent Shrichand has in fact established his case beyond all reasonable doubts that it was appellant Nandlal who had in fact misused the disputed cheque and committed forgery. The learned trial Court as well as the learned appellate Court, by discussing the evidence in

the case of forgery, have concurrently observed guilt of appellant Nandlal and that too on the basis of evidence.

14. Further, it appears from the evidence in the case filed by appellant Nandlal under Section 138 of N.I. Act that Nandlal could not adduce any trustworthy and reliable evidence that the disputed cheque had in fact issued by Shrichand for discharge of any legal liability. Therefore, when the respondent Shrichand in his case had established beyond all reasonable doubt that Nandlal had misused the disputed cheque, then there was no occasion for him to rebut the presumption by entering into witness box separately in the case filed by Nandlal under Section 138 of N.I. Act. Therefore, the judgments relied on by the learned Counsel for the appellant Nandlal in the cases of *Rohitbhai vs State of Gujrat*, *T.P. Murugan vs Bojan* and *Rangappa vs Sri Mohan* (supra) observing that there is presumption that when the cheque is issued, then it is to be presumed that it was issued for discharging legal liability, are not applicable to this case. Specically such presumption is rebuttable and in the instant matter the respondent Shrichand has definitely rebutted the same. Under such circumstances, there is no need to interfere with both the impugned judgments and accordingly the

criminal appeal and criminal revision application stand dismissed.

(SANDIPKUMAR C. MORE, J.)

15. After pronouncement of judgment, the learned Counsel for the appellant/applicant submits that the appellant is at present on death-bed suffering from lungs cancer of fourth stage. In view of the same, three months' time to surrender the appellant before the concerned authority, is granted.

(SANDIPKUMAR C. MORE, J.)