



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

CRIMINAL APPEAL NO. 196/2010

(Pradeep S/o. Sudhakar Allurwar Vs. Shri Brijlal S/o.Ramlakhan Pande & anr.)

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

Court's or Judge's orders

Mr. Y. A. Kullarwar, Advocate h/f Mr. M. A. Kumar, Advocate for
appellant.

Mr. A. R. Wagh, Advocate for respondent No.1.

Mr. Bhagwan M. Lonare, APP for respondent No.1.

CORAM: M. M. NERLIKAR, J.

DATED : 04/12/2025.

Heard the learned counsel for the appellant,
learned counsel for respondent No.1 and learned APP for
respondent No.2.

2. The appellant challenges the judgment and order dated 25.08.2009 passed by the learned Chief Judicial Magistrate and Special Court, Chandrapur, whereby the original accused/present respondent No.1 was acquitted for the offence punishable under Section 138 of the Negotiable Instruments Act ('N.I. Act') on the ground that the earlier transaction which took place on 24.07.2007 for Rs.20,000/- then there was no question of issuing a promissory note of Rs.50,000/- on 28.07.2006. From the record, it appears that initially, the appellant gave a hand loan of Rs.20,000/- and thereafter, Rs.30,000/-. However,

in the complaint and so also in the evidence, wrong date was mentioned in respect of first transaction of Rs.20,000/- as 24.07.2007 instead of 24.07.2006. Therefore, the entire issue and the order of the judgment revolves around these two dates, even in the evidence which was led on affidavit by the complainant/appellant the date is mentioned as 24.07.2007. However, the fact cannot be ignored that so far as the notice which was issued by the complainant, it specifically states that “so my client arranged hand loan Rs.20,000/- (Rs. Twenty Thousand only) on 24.07.2006 and Rs.30,000/- (Thirty Thousand only) on 28.07.2006 in presence of common friend R. R. Dedujwar”. It is further to be noted that the complainant has examined PW-2, even in his cross-examination it has come on record that, “the complainant told me that previously accused had taken Rs.20,000 from him.” So far as the promissory note which was executed i.e. Exh.47, it was executed on 28.07.2006 when the second hand loan of Rs.30,000/- was given by the complainant to the accused and considering the first hand loan and second hand loan, the promissory note was executed on 28.07.2006. It appears that the date

24.07.2007 has been given much importance in the impugned judgment by the Trial Court and the entire discussion is on that basis. Apparently, the Trial Court has committed gross error. However, it was also the duty of the appellant to see whether the date 24.07.2007 is the correct date, it was negligence on part of the appellant and therefore, the Court accordingly came to the conclusion that promissory notice cannot be issued on 28.07.2006, if the loan was advanced on 24.07.2007. Even if the notice issued by the complainant to the accused is considered and similarly if the evidence of PW-2 is considered, it appears that there is a typographical mistake, therefore, this Court is of the opinion that an opportunity is required to be given to the appellant to correct the aforesaid year as 2006 instead of 2007.

3. As this limited issue is raised, I deem it appropriate to quash and set aside the order dated 25.08.2009 passed by the learned Chief Judicial Magistrate and Special Court, Chandrapur and remand the matter back only to consider the date as 24.07.2006 instead of 24.07.2007.

**Correction is
carried out as per
order dated
08.12.2025.**

4. It is made clear that whatever evidence has been led by the parties, will continue on the file of the record of the Trial Court. It is not open for the parties to lead further evidence. However, so far as the correction in the date is concerned, instead of 24/07/2007, it shall be considered as 24/07/2006, and evidence to that effect only be permitted to be led by the parties. The Trial Court shall give an opportunity to lead evidence only to that effect. However, for this negligence, it is necessary to impose cost of Rs.15,000/- to be payable to the respondent.

5. With the above observations, the appeal is disposed of. The Trial Court should consider the date as mentioned above and pass the appropriate judgment.

6. The above order is subject to cost of Rs.15,000/- to be paid by the appellant to the respondent within a period of two weeks from the date of uploading of this order.

7. The Trial Court shall decide the matter as per law.

(M. M. NERLIKAR, J.)