

Priya Soparkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.397 OF 2025

Sunil Suryakant Zodge

...Appellant

Versus

The State of Maharashtra and anr.

...Respondents

Mr. Vaibhav V. Ugle, for the Appellant.

Ms. Hasnain Kazi with Ms. Shraddha Wavhul and Ms. Simran Shaikh, for the Respondent No.2.

Ms. Shilpa K. Gajare, APP, for the State.

CORAM: R. M. JOSHI, J.

DATED: 16th JANUARY, 2026.

PC:-

1. By consent of both the parties, heard finally.
2. This appeal takes exception to the judgment and order dated 9th February, 2018 passed in Summary Case No. 155 of 2015, whereby the Trial court acquitted with the accused for the offence punishable under Section 138 of the Negotiable Instrument Act.
3. It is the case of the complainant before the Trial Court that the complainant has acquaintance with the accused for long period of time and that the tempo owned by him was proposed to be sold to the accused under an agreement. The accused accepted the said offer of the complainant for the sale of tempo for Rs.13,70,000/- and also agreed to repay outstanding loan of rupees Rs.5,90,000/-

to the Complainant's bank directly and to pay Rs.7,80,000/- within a period of three months. An agreement came to be executed between the parties on 20th September, 2013 before Notary. Complainant claims that against the purchase price of the tempo, accused issued cheques which came to be dishonored. The Complainant, therefore, issued statutory notice to the accused. Since the notice was not complied, complaint came to be filed before the Trial Court. Complainant led evidence and relied upon the Agreement-Exhibit 25. Dishonoured cheques-Exhibits 27 and 28 memos issued by the bank Exhibits 30 and 31 for the dishonoured of the cheques with the remark "funds insufficient". The accused did not lead any evidence. The Trial Court acquitted the accused by passing impugned judgment and order. Hence, this Appeal.

4. Learned counsel for the Complainant submits that the trial Court has committed error in acquitting the accused by ignoring material evidence on record, and more particularly, pursis filed by the accused admitting the liability of payment to the Complainant. In this regard, he took this Court through the evidence of the Complainant, more particularly, the agreement for sale-Exhibit 25 and the cheques (Exhibits 27 and 28). It is his submission that there is no dispute made by the accused with regard to the exhibition of the documents. According to him, the accused had filed pursis at Exhibit 18, admitting the fact that the cheques in question were issued towards payment of amounts in respect of purchase of the tanker from the complainant. According to him, in such circumstances, the Trial Court was not justified in acquitting the accused, which order is passed in ignorance of evidence on

record, so also the presumption under Section 118 and 139 of the Negotiable Instruments Act.

5. Learned counsel for the accused supported the impugned judgment and order by contending that it is open for the accused to rebut presumption under Section 118 and 139 of the Act not only by leading evidence but even by cross examination of Complainant or his witnesses. It is his submission that the cross-examination of the Complainant indicates that the tanker in question was sold by the Complainant to Mr. Shabir Shaikh for Rs.11,00,000/-. It is his submission that once such admission is given by the Complainant, the question of any liability of the accused of payment of consideration towards the same does not arise. At this stage, learned counsel for the Appellant submits that there is nothing on record to indicate that the tanker, which was purchased by the accused, was sold by the Complainant to third party. It is further submission of the counsel for the accused that the Complainant in his cross examination has admitted that the accused was working as a driver on his tanker, and the said tanker was attached with Goverdhan Dairy and the bills thereof used to be issued in the name of accused. It is his submission that since from the said business whatever income was received from the said business was paid by the accused in cash or cheques and therefore, cheques in question were issued by way of security. It is submission that, having regard to the evidence on record, the pursis filed by the accused will not be conclusive in nature.

6. There cannot be any dispute with regard to the presumption under Sections 118 and 139 of Negotiable Instruments Act in favor

of Complainant. At the same time, said presumption can be rebutted by the accused, not only by entering into the witness box, but even by way of cross examination of Complainant or his witnesses. Here, in this case, the accused has not disputed the signature on the cheques in question. However, by way of cross-examination of the Complainant, it is suggested that the cheques were issued by way of security. No doubt, the accused has not responded to the statutory notice issued by the Complainant to him. However, in the cross-examination, the Complainant candidly admits that the accused was working as a driver of the tanker, which was attached to Goverdhan Dairy. He further accepted that the bill of the said tanker used to be drawn in the name of accused, and that accused was making payment to the Complainant by cash or cheque. In this backdrop, the denial of the Complainant that the cheques were issued by the accused towards security is not sufficient.

7. This becomes more relevant particularly in view of the fact that the Complainant admits that the tanker which he had purchased in 2010 was sold to Shabir Shaikh for a sum of Rs.11 lakhs. Though now it is sought to be argued on behalf of the Complainant that the said tanker which was sold was different than the one which was purchased by the accused. There is neither any explanation given by the Complainant in his evidence, nor any other evidence is there on record to hold on the contrary. The notice issued by the Complainant to the accused dated 9th April, 2015 also indicates the purchase of the tanker in question in the year 2010. Thus, there is overwhelming evidence on record to show that the accused has succeeded in rebutting the presumptions

contemplated by the appropriate provision, and merely because pursis was filed, the cross-examination and admissions in the cross-examination given by the Complainant cannot be discarded.

8. It is settle position of law that unless the judgment and order of acquittal is perverse and the Trial Court has failed to take into consideration relevant evidence on record and ignorance thereof has led to to miscarriage of justice, no interference can be caused therein.

9. In view of the above discussion, there is no merit in the appeal and hence, it stands dismissed.

(R. M. JOSHI, J.)