

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 53 OF 2003

Gurubachan Singh,  
major, residing at  
House No.71/1,  
Carmichem Bhat,  
Merces, Goa.

... Appellant

versus

1. P. K. Rajgopalan,  
major, Primeiro  
Bairro, Santa Cruz,  
Tiswadi, Goa.

2. State  
through Public Prosecutor,  
High Court of Bombay at  
Panaji, Panaji, Goa.

... Respondents

Mr. A. P. Lawande, Advocate for the Appellant.

Mr. S. D. Lotlikar, Senior Advocate with Ms. Shreya  
Naik, Advocate for Respondent No.1.

Mr. S. N. Sardessai, Public Prosecutor for the State.

CORAM : P. V. HARDAS, J.

DATE : 29TH JANUARY, 2004.

**ORAL JUDGMENT**

The Appellant/Original Complainant being aggrieved by the Judgment of the IInd Additional Sessions Judge, Panaji, dated 27th January, 2003, in Criminal Appeal No.34 of 2001, acquitting the Respondent/Accused for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881, has filed the present Appeal.

2. The facts in brief as are necessary for the decision of this Appeal are set out hereunder:-

A complaint under Section 138 of the Negotiable Instruments Act, 1881, which was registered as Private Criminal Complaint No.131/0A/96/C, came to be filed in the Court of Judicial Magistrate First Class at Panaji, alleging therein that the cheques issued by the Respondent/Accused came to be dishonoured with the remark "Exceeds Arrangement" and "stop payment by the drawer". The Complainant examined himself as a witness in support of his case. The Complainant stated that the Accused was a Proprietor of M/s. Raja Enterprises. The Accused was doing construction business and the Complainant came to be acquainted with the Accused through one S. Sudevan. The Accused requested for loan in connection with his

construction activity and the Complainant had accordingly advanced him a loan of Rs.1,51,329/- on 18th July, 1995. The Accused had promised to pay the aforesaid amount of loan on or before 17th July, 1996. The Accused after having received the said amount had issued to him three cheques of Rs.50,000/- each and one cheque for Rs.41,450/-. The cheque for Rs.4,450/- was towards the payment of the interest or other liability due at the time of final settlement. The said three cheques are at Exh.PW1/A. The Complainant further averred that the Complainant had issued to him a promissory note which is at Exh.PW1/B. The Complainant presented the said three cheques to his Bank for payment and all the cheques were returned unpaid with a memorandum of the Bank of the Accused with a remark "Exceeds Arrangement" and "stop payment by the drawer". The said memorandum is at Exh.PW1/C. Upon the bouncing of the cheques, a notice at Exh.PW1/D came to be issued to the Accused. The Accused received the said notice on 14th October, 1996 vide acknowledgement card at Exh.PW1/E. The Accused submitted his reply to the said legal notice at Exh.PW1/F. The Complainant had stated that he had entered the dates on the said cheques as per the instructions of the Accused.

3. The Accused examined himself as a witness

and had produced on record a bus ticket which showed that on 18th July, 1995, the Accused had left for Karnataka on account of the demise of his mother-in-law. The Accused further stated that the Complainant was introduced to him somewhere in the month of August, 1994. The Complainant requested him to provide some job for him in his concern and accordingly was given a job as a Supervisor. At that time, he was having five contracts. Subsequently, they entered into a joint partnership business and the Complainant agreed to obtain finances from a financier. The Complainant did not disclose the name of the financier despite repeated requests. Towards the repayment of the loan from the financier, the Accused would issue cheques without any dates as a security to the financier and after repayment of the loan amount, the financier would return the cheques to the Accused through the Complainant. The Accused had produced certain cheques showing that only the amount of Rs.50,000/- was written in figures and on two cheques the dates were written. The name of the payee was left blank. The said cheques are at Exh.DW1/A. Due to the differences between them the Complainant, who had not maintained the proper account of the business, had threatened to deposit certain cheques given by the Accused by writing his own name. The Accused had accordingly issued a

letter to the Bank dated 1st June, 1995, to stop payment of the cheques. The Complainant approached him and had promised to show the accounts and also promised that he would not deposit the cheques and accordingly, the letter dated 1st June, 1995, stopping payment of the cheques came to be withdrawn by a subsequent letter dated 3rd June, 1995. Towards the settlement, a declaration on Affidavit came to be executed at Exh.PW1/D2. The Accused also referred to an earlier prosecution filed by the Complainant under Section 138 of the Negotiable Instruments Act, 1881, which resulted in acquittal and the acquittal was confirmed by the High Court.

4. The learned Trial Court on appreciation of the evidence had convicted and sentenced the Accused to undergo Simple Imprisonment for one month and fine of Rs.500/-, in default Simple Imprisonment for one month. The Accused being aggrieved by the conviction filed Criminal Appeal No. 34 of 2001 while the Complainant filed Criminal Revision Application No. 48 of 2001 praying for awarding compensation under Section 357 of the Code of Criminal Procedure. By the common Judgment, impugned in this Appeal, the appellate Court allowed the Appeal filed by the Accused and dismissed the revision filed by the Complainant.

5. The learned appellate Court at para 11 of the Judgment found that the statement of the Complainant that for the payment of the loan amount, the Accused had given a cheque which was contrary to the recitals of the promissory notes at Exh.PW1/B which stated that the cheques at Exh.PW1/A and another cheque were retained by the Complainant as a security while cheque at Exh.PW1/A colly was kept as an additional security and that the cheques would be returned after payment of quarterly instalments. The learned appellate Court further, on the basis of the evidence, held that the statement of the Complainant that he had received the cheques on or about 15th July, 1995 stood falsified as the Accused had issued a letter to the Bank dated 1st June, 1995 regarding stopping payment on the said cheques. Thus, the Complainant was in possession of the cheques prior to the date he states that he came in possession. The learned appellate Court also found that the evidence of the Accused that the Complainant was in possession of the cheques from May, 1995, was not challenged in the cross-examination. The learned appellate Court, therefore, observed that the Complainant had come to the Court with a false case that the cheques had been issued to him in July, 1995. The learned appellate Court also found that the Complainant had earlier

filed a case stating that he had advanced loan to the Accused to a tune of Rs.4,00,000/- and the cheques issued towards the discharge of that liability had bounced. In the earlier proceedings, the Accused had been acquitted and, therefore, the appellate Court found that it was highly unlikely that the Complainant would advance loan to the Accused afresh without obtaining any receipts. The appellate Court also found that the Complainant had admitted that he was not an Income Tax payee and there was no explanation as to how the Complainant had arranged for cash of Rs.1,51,329/-. The promissory note admittedly was executed on 2nd August, 1995 and, therefore, the statement of the Complainant that he had received the promissory note along with the cheque on 15th or 16th July, 1995 stood falsified. The Complainant had specifically stated that on settlement of the account he owed Rs.1,51,000/- to the Complainant which was repaid by him by issuing a cheque for Rs.86,500/- and cash of Rs.64,829/- by withdrawing the said amount from his account. He has exhibited the pass book at Exh.PW1/D. The appellate Court, therefore, found that the presumption stood rebutted in view of the evidence of the Accused as well as the admissions of the Complainant in his cross-examination.

6. Mr. A. P. Lawande, learned Counsel appearing on behalf of the Appellant/Complainant has submitted that the Accused had admitted that he owed an amount of Rs.1,51,000/- to the Complainant and thus, the presumption was not rebutted as the cheques came to be issued towards the discharge of the debt or liability. The evidence on record clearly indicates that the cheques had been issued by the Accused and were in possession of the Complainant much prior to the date on which the Complainant states that he had advanced loan to the Accused. The cheques were, therefore, not issued by the Accused towards the discharge of his debt or liability. According to the Accused after settlement of the account, the liability of Rs.1,51,000/- had been discharged by him by issuing a cheque and by paying the remaining balance in cash. Be that as it may, it is established that the Accused had not issued the cheques on the dates so stated by the Complainant and, therefore, the cheques had not been issued towards the discharge of liability.

7. This is an Appeal against acquittal and the view taken by the learned lower appellate Court is a possible view on the basis of the evidence on record. No perversity in the reasoning of the appellate Court



is pointed out to warrant any interference in an Appeal against acquittal. The Appeal is sans merit and the same is dismissed.

8. Criminal Appeal No. 53 of 2003 is, therefore, dismissed.

P. V. HARDAS, J.

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