2025:BHC-AS:53876

MJ Jadhav

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

APPLICATION FOR LEAVE TO APPEAL (PVT.) NO. 31 OF 2020

Chaturbhuj Hiraji Gujar … Applicant

Vs.

Kishor Shankar Shetty And Anr. … Respondents

Mr. Ramesh Devji Kamble for the Applicant.
Mr. D. J. Haldankar, APP for the State.

CORAM : GAURI GODSE, J.
DATED : 28th NOVEMBER 2025

ORDER:

1. This application is filed under Section 378(4) of the Criminal Procedure Code ('CrPC') by the original complainant for seeking leave to file an appeal to challenge the order passed by the learned Magistrate acquitting respondent no.1 from the offence punishable under Section 138 of the Negotiable Instruments Act.

2. Learned counsel for the applicant submits that the complaint has been dismissed on the ground that the cheque return memos produced on record did not bear the official seal of the Bank. Hence, in the absence of presumptive value as contemplated under Section 146 of the Negotiable Instruments Act, the dishonour of cheques for

initiating action under Section 138 of the Negotiable Instruments Act was not proved. Learned counsel for the applicant submits that the presumption under Sections 119 and 139 was in favour of the complainant and thus, in the absence of any rebuttal evidence, the presumption was in favour of the complainant; hence, the cheque return memos without an official seal cannot be a ground to acquit the respondent. To support his submissions, learned counsel for the applicant relied upon the decision of the Delhi High Court in ***Guneet Bhasin Vs State of NCT of Delhi***[1]***.*** He submits that the Delhi High Court has taken a view that if a cheque return memo does not bear any official stamp of the Bank, that itself would not render a cheque return memo invalid and illegal. He therefore submits that in the present case, only because the cheque return memo did not bear the official seal of the Bank, it could not have been discarded by the trial court.

3. To support his submissions on the merits of the allegations, learned counsel for the applicant submits that the loan agreement was produced on record to support the allegations that the complainant had advanced financial help of Rs. 20 Lakhs to the accused. For the loan repayment, the accused also signed receipts. Hence, there was sufficient evidence to prove the amount of

1 CRL.M.A. No.16919 of 2022 dated 14th November 2022

financial assistance paid to the accused and that the dishonoured cheques were for the repayment of the said amount. Learned counsel for the applicant, therefore, submits that the applicant be granted leave to file an appeal to challenge the order of acquittal.

4. I have perused the papers of the application. The accused had examined the complainant's father to support his defence that the complainant was not in a position to advance the loan as alleged by the complainant. The trial Court observed that the complainant failed to cross-examine the defence witness and also failed to prove that he had taken the amount from his father and given it to the accused. Thus, considering the evidence on record, sufficient doubt was created on the complainant's case. Hence, relying upon the evidence on record, the trial Court refused to accept that the dishonoured cheques were towards any legally enforceable liability. Since the actual payment was not proved, the trial Court accepted the defence raised by the accused as probable and disbelieved the allegations of the complainant that an amount of Rs. 18 Lakhs was paid, and the dishonoured cheques were for repayment of the loan.

5. With regard to proof of dishonour of cheques, the cheque return memos produced by the complainant were not accepted as legal and valid for want of the Bank's official seal on the cheque

return memos. The complainant has not examined any independent witness to prove the cheque return memos. Hence, there was no record to accept the presumption under Section 146 for the purpose of taking criminal action for conviction under Section 138 of the Negotiable Instruments Act. This Court in the case of ***Pravin Dhonduram Bhoi Vs. Anil Jijaram Kanaskar and Anr.***[2] has taken a view that in the absence of any official Bank seal on the return memo, the presumption under Section 146 cannot be accepted. This Court held in the said decision in paragraphs 7 and 8 as under:

> "7. This court, in the case of ***Vandana v. Abhilasha*** (2018 SCC OnLine Bom 2086*)* held that Section 146 of the said Act provides that if the complainant places on record a slip or memo issued by the bank having official mark of the bank thereon, denoting that the cheque was dishonoured, it would be presumed that such cheque was dishonoured until such fact was disproved. But, when the memo produced did not bear the official mark of the bank, there was no document as contemplated under section 146 of the said Act to presume that the fact of dishonour of the cheque had been proved, and the burden continues to lie on the complainant to prove the basic fact of dishonour of the cheque. It is held that a mere statement made in the statutory notice and the complaint filed before the Court would not constitute proof of dishonour of cheque, unless further evidence to corroborate the same was placed on record by examining the bank official and placing on

2 Criminal Application No. 123 of 2020 dated 11th November 2025

> record a certificate contemplated under section 65-B of the Indian Evidence Act, 1872, in respect of the memo of the Bank, which was allegedly a computer generated electronic record.
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> 8. Thus, considering the view taken by this court, the cheque return memo, in the present case, produced without the signature or stamp of the bank, cannot be accepted as proof of dishonour of the cheque by referring to Section 146 of the Negotiable Instruments Act. The trial court's findings of not accepting the return memo as proof of dishonour of the cheque, attracting Section 138 of the Negotiable Instruments Act, cannot be faulted."

6. The decision of the Delhi High Court relied upon by the learned counsel for the applicant would not be of any assistance in the facts of the present case. The observations of the Delhi High Court were in a petition filed under Section 482 of the CrPC, challenging the order of issuance of process in a criminal complaint filed under Section 138 of the Negotiable Instruments Act. While examining the objection to the cheque return memo not bearing the official seal, the Delhi High Court held that merely because the bank seal is absent from the cheque return memo, it would not render the memo illegal or invalid. However, the Delhi High Court has further observed that if there is any illegality or irregularity in the format of the cheque return memo, the same has to be addressed during the

course of trial. Hence, the observations of the Delhi High Court were with reference to the objection raised before the trial commenced. In the present case, the respondent is acquitted after a full-fledged trial. The complainant failed to lead any evidence or examine any Bank official to prove the cheque return memos. Hence, the decision of the Delhi High Court would not be of any assistance in the present case.

7. Hence, the view taken by this court in ***Pravin Dhonduram Bhoi*** would squarely apply to the facts of the present case. Considering the evidence on record, the allegation that the dishonoured cheques were towards any legally enforceable liability is not proved beyond a reasonable doubt. The presumption under Section 146 is also not proved as there was no official Bank seal on the cheque return memos.

8. Hence, considering the evidence on record, the view taken by the trial court is a plausible view that could have been taken based on the evidence on record. There can be interference in an appeal against acquittal if, after reappreciation of evidence, the only conclusion that could be drawn is that the guilt of the accused is proved beyond a reasonable doubt. In the present case, there is no ground for granting leave to file an appeal against the order of

acquittal.

9. The Application is, therefore, dismissed.

(GAURI GODSE, J.)