

8. In the circumstances, I have to dismiss the appeal. Appeal dismissed.

a **Result:-** Appeal dismissed.

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ACQUITTAL & BAIL CASES
b **HIGH COURT OF BOMBAY**

(K.R.Shriram, J.)

Criminal Appeal No. 388 of 1999

Decided on 15 November, 2019

c **SHANTARAM NAMDEO SATHE** - Appellant(s).

Versus

STATE OF MAHARASHTRA & ANR - Respondent(s).

d **Law Covered:-** (A) Code of Criminal Procedure, 1973 –
Sections 256 & 378(4) – Negotiable Instruments Act, 1881 –
Section 138 – Appeal against acquittal – Date of issue of cheque
– different dates given by complainant – complainant is totally
unreliable and considering the complainant's evidence, the stand of
the accused/respondent seems to be more plausible – Acquittal
e upheld. (Para 6 & 9)

(B) Negotiable Instruments Act, 1881 – Section 138 – Date
of issue of cheque – disputed regarding – Held, cheque was issued in
February 1996 & not on 23rd May 1997 (as claimed by complainant)
f because the transaction, for which payment was made, was of
February 1996. (Para 6)

(C) Negotiable Instruments Act, 1881 – Section 138 – Stop
payment – stop payment instructions was issued about eight
months prior to the date of issue alleged by the complainant – Held,
g then the dishonoured cheque would have been with the accused – In
such a case, the accused giving stop payment instructions prior to
issuance would not arise – not the case of the complainant that the
accused issued a post dated cheque – Acquittal upheld. (Para 6)

h (D) Negotiable Instruments Act, 1881 – Section 138 –
Receipt of part payment in case by the complainant – did not issue
any receipt – this fact was not mentioned in the complaint &
examination in chief – Assumption by Court – Held, why could the
Court not assume that similarly he would have received remaining
amount in cash but chose not to give the receipt. (Para 7)

(E) *Negotiable Instruments Act, 1881 – Section 138 – Offence under – Proving of – Essential ingredient – cheque must have been issued for the discharge in whole or in part of any debt or other liability – otherwise Section 138 can not be invoked. (Para 8)* a

(F) *Negotiable Instruments Act, 1881 – Section 138 – Cheque issued towards security – held, if the cheque is issued only as security for performance of certain contract – or an agreement – & not towards the discharge of any debt or other liability – offence u/s 138 is not made out. (Para 8)* b

(G) *Negotiable Instruments Act, 1881 – Section 138 – Admission by complainant – the cheque issued was only for guarantee – Held, the cheque was not issued for the discharge of any debt or other liability – The important ingredient u/s 138 not made out – On this ground itself the impugned judgment has to be upheld – Acquittal upheld. (Para 9)* c d

Facts:- The appellant, was an agriculturist and was raising various crops in his land including grapes. The accused/respondent was a trader and exporter of grapes. The accused alleged purchased grapes from the complainant, paid some amount and for the balance due, gave a cheque for `2 lakhs, which was returned unpaid in view of the stop payment instructions given by the accused/respondent. After notice the complaint was filed. The contention of the accused was that the said was a blank cheque, given only as a security. He had put the signature but no date or amount or name was filled in. Since he paid all the amount due in cash and there was no legal liability due. Finding the defence reliable the accused was acquitted which was upheld by the hon'ble Bombay High Court. e f

Law of relief:- If the important ingredient u/s 138 not made out, on this ground itself the accused is liable to be acquitted. g

Held:- The complainant is totally unreliable and considering the complainant's evidence, the stand of the accused/respondent seems to be more plausible. I say this because in the examination in chief, the complainant says that he was given the cheque for Rs.2 lakhs on 25th May 1997. In the cross examination, he says the accused gave him cheque in the month of February 1996. In the cross examination, the complainant again clarifies that the cheque was issued in the month of May 1996. Then he says in re-examination that the cheque was issued on 23rd May 1997. I have reasons to believe that the cheque was issued in February 1996 and not on 23rd May h

a 1997 because the transaction, for which payment was made, is of February 1996. Moreover, what is very pertinent to note is the stop payment instructions (Exhibit 35) was issued on 12th September 1996. If according to the complainant, the cheque was issued to him only on 23rd May 1997, then the cheque bearing no.613072, which was dishonoured, would have been with the accused. In such a case, the accused giving stop payment instructions for that cheque on 12th September 1996 would not arise. A cheque is also valid for only six months. So the stop payment instructions have been given almost 16 months prior to the date of the cheque. It is also not the case of the complainant that the accused issued a post dated cheque dated 23rd May 1997. (Para-6)

d Secondly, the complainant also states that he had been paid Rs.25,000/- in cash and he did not issue any receipt for that amount. The fact that he had received Rs.25,000/- in cash is not mentioned in the complaint and in his examination in chief. Why could the Court not assume that similarly he would have received Rs.1,85,000/- in cash from the accused but chose not to give the receipt. Though in the examination in chief and in the complaint, the complainant states the cheque was given for the grapes that he sold to the accused, in the cross examination, the complainant agrees that the cheque issued was as guarantee. The complainant states " it is true that the accused issued cheque for guarantee". There is no re-examination. (Para-7)

f It is settled law that the important ingredient for the offence punishable under Section 138 is that cheque must have been issued for the discharge in whole or in part of any debt or other liability. If the cheque is not issued for the discharge of any debt or other liability, Section 138 can not be invoked. This Court in the matter of *Joseph Vilangadan V/s. Phenomenal Health Care Services Private Limited and Anr., 2011 CRI. L. J. 531* and in the matter of *Adarsh Gramin Sahakari Pat Sanstha Maryadit, Wadi, Nagpur V/s. Dattu Ramdasji Paithankar, 2010 CRI. L. J. 1971* has held that if the cheque is issued only as security for performance of certain contract or an agreement and not towards the discharge of any debt or other liability, offence punishable under Section 138 is not made out. (Para-8)

The complainant in his cross examination has admitted that the cheque issued was only for guarantee. Therefore, these two judgments squarely applies to the facts of this case and there can be

no other conclusion that the cheque was not issued for the discharge of any debt or other liability. The important ingredient for the offence punishable under Section 138, therefore, has not been dealt with. On this ground itself the impugned judgment has to be upheld. Further, the fact that the complainant has been giving different dates on which the cheque has been issued also shows that he is economical with truth. It is necessary to note that one who comes to the court, must come with clean hands. More often than not, process of the Court is being abused. Unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal-gains indefinitely. A person, who's case is based on falsehood, has no right to approach the Court. In such a situation, as held by the Apex Court in *S.P. Chengalvaraya Naidu V/s. Jagannath, 1994 SCC (1) 1* he can be summarily thrown out at any stage of the litigation. (Para-9)

Cases Referred:-

1. *Joseph Vilangadan V/s. Phenomenal Health Care Services Private Limited and Anr., 2011 CRI. L. J. 531, (Para-8)*
2. *Adarsh Gramin Sahakari Pat Sanstha Maryadit, Wadi, Nagpur V/s. Dattu Ramdasji Paithankar, 2010 CRI. L. J. 1971, (Para-8)*
3. *S.P. Chengalvaraya Naidu V/s. Jagannath, 1994 SCC (1) 1, (Para-9)*

JUDGMENT

K.R.SHRIRAM, J.: - 1. This is an appeal filed under Section 378 of the Code of Criminal Procedure impugning an order and judgment dated 19th April 1999 passed by the Judicial Magistrate, First Class, Pimpalgaon (B), by which the Magistrate was pleased to acquit the accused, i.e., respondent no.2 herein.

2. Though notice has been issued to appellant, nobody is present. With the assistance of the APP - Ms. Malhotra and Ms. Raje, counsel appearing for respondent no.2, I have perused the records and proceedings, evidence and the impugned judgment.

3. The facts in brief are that the complainant, i.e., the appellant, was an agriculturist and was raising various crops in his land including grapes. The accused/respondent carries on business as a trader and, *inter alia*, exports grapes. The accused is alleged to have purchased grapes from the complainant, paid some amount and for the balance due, gave a cheque on 23rd May 1997 for Rs.2 lakhs. When the cheque bearing no.613072 was presented, the cheque was returned unpaid in view of the stop payment instructions given by

a the accused/respondent. It is the case of the complainant that he requested the accused to honour the payment but the accused avoided making payments and therefore, by a notice dated 8th June 1997 the complainant called upon the accused to make payment but despite receipt, the accused neither responded nor made the payment. Hence, the complaint was filed on 5th July 1997.

b 4. Process was issued and the plea of the accused was recorded on 19th January 1998. Plea was read over and explained in Marathi to the accused. Accused pleaded not guilty and claimed to be tried. The accused does not deny having purchased grapes but states
c that the cheque of Rs.2 lakhs was given only as a security cheque and he paid Rs.2,25,000/- to the complainant in three installments of Rs.25,000/-, Rs.1,85,000/- and Rs.15,000/-, which was paid to a third party on the instructions of the complainant. Accused says that he
d gave blank cheque as security. He had put the signature but no date or amount or name was filled in. Therefore, there was no legal liability due. Moreover, the stop payment instructions was given on 12th September 1996, whereas the cheque is dated 25th May 1997 and that itself shows the complainant's claim is bogus.

e 5. The complainant led evidence of three witnesses, i.e., complainant himself as PW-1, one Dnyaneshwar Kashinath Watpade as PW-2, who was the employee of NDCC Bank, which is the bank on which the cheque was drawn and one Suresh Kashinath Dhakrao as PW-3, an employee of the complainant's bank being
f Bank of India. In the evidence of PW-2 and PW-3, it has come on record that the stop payment instructions were given by the accused on 12th September 1996.

g 6. The complainant is totally unreliable and considering the complainant's evidence, the stand of the accused/respondent seems to be more plausible. I say this because in the examination in chief, the complainant says that he was given the cheque for Rs.2 lakhs on 25th May 1997. In the cross examination, he says the accused gave him cheque in the month of February 1996. In the cross examination,
h the complainant again clarifies that the cheque was issued in the month of May 1996. Then he says in re-examination that the cheque was issued on 23rd May 1997. I have reasons to believe that the cheque was issued in February 1996 and not on 23rd May 1997 because the transaction, for which payment was made, is of February 1996. Moreover, what is very pertinent to note is the stop payment

instructions (Exhibit 35) was issued on 12th September 1996. If according to the complainant, the cheque was issued to him only on 23rd May 1997, then the cheque bearing no.613072, which was dishonoured, would have been with the accused. In such a case, the accused giving stop payment instructions for that cheque on 12th September 1996 would not arise. A cheque is also valid for only six months. So the stop payment instructions have been given almost 16 months prior to the date of the cheque. It is also not the case of the complainant that the accused issued a post dated cheque dated 23rd May 1997.

7. Secondly, the complainant also states that he had been paid Rs.25,000/- in cash and he did not issue any receipt for that amount. The fact that he had received Rs.25,000/- in cash is not mentioned in the complaint and in his examination in chief. Why could the Court not assume that similarly he would have received Rs.1,85,000/- in cash from the accused but chose not to give the receipt. Though in the examination in chief and in the complaint, the complainant states the cheque was given for the grapes that he sold to the accused, in the cross examination, the complainant agrees that the cheque issued was as guarantee. The complainant states " it is true that the accused issued cheque for guarantee". There is no re-examination.

8. It is settled law that the important ingredient for the offence punishable under Section 138 is that cheque must have been issued for the discharge in whole or in part of any debt or other liability. If the cheque is not issued for the discharge of any debt or other liability, Section 138 can not be invoked. This Court in the matter of *Joseph Vilangadan V/s. Phenomenal Health Care Services Private Limited and Anr., 2011 CRI. L. J. 531* and in the matter of *Adarsh Gramin Sahakari Pat Sanstha Maryadit, Wadi, Nagpur V/s. Dattu Ramdasji Paithankar, 2010 CRI. L. J. 1971* has held that if the cheque is issued only as security for performance of certain contract or an agreement and not towards the discharge of any debt or other liability, offence punishable under Section 138 is not made out.

9. The complainant in his cross examination has admitted that the cheque issued was only for guarantee. Therefore, these two judgments squarely applies to the facts of this case and there can be no other conclusion that the cheque was not issued for the discharge of any debt or other liability. The important ingredient for the offence punishable under Section 138, therefore, has not been dealt

ABC 2020(I) *Dnyaneshwar S/o Kachru Todmal Vs. State of Maharashtra & Ors.* **13**

a with. On this ground itself the impugned judgment has to be upheld. Further, the fact that the complainant has been giving different dates on which the cheque has been issued also shows that he is economical with truth. It is necessary to note that one who comes to the court, must come with clean hands. More often than not, process of the Court is being abused. Unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal-gains indefinitely. A person, who's case is based on falsehood, has no right to approach the Court. In such a situation, as held by the Apex Court in *S.P. Chengalvaraya Naidu V/s. Jagannath, 1994 SCC (1) 1* he can be summarily thrown out at any stage of the litigation.

10. Appeal dismissed.

Result:- Appeal dismissed.

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ABC 2020 (I) 13 BOM
ACQUITTAL & BAIL CASES
HIGH COURT OF BOMBAY

(T.V. Nalawade & S.M. Gavhane, JJ.)

Criminal Writ Petition No. 25 of 2019

Decided on 29 November, 2019

Aurangabad Bench

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DNYANESHWAR S/o. KACHRU TODMAL - *Petitioner(s).*

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Versus

STATE OF MAHARASHTRA & ORS - *Respondent(s).*

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Law Covered:- (A) *Constitution of India – Article 21 – Code of Criminal Procedure, 1973 – Sections 95, 93, 161, 165, 165(1), 165(2), 165(3), 166 & 197 – Indian Penal Code, 1860 – Sections 197, 279 & 304-A – Bombay Police Act, 1951, Section 147 – Search without warrant – Most of the police officials were assigned different duties at different places – All of them came together for this action – but no writing in respect of secret information & compliance of provision of sec. 165 – Subsequent to the search entry was made in the station diary – Held, such entry cannot be used to show that there was compliance of provision of sec. 165 of the Cr.P.C. – the action of the police officers was illegal – the action was not only the infringement into privacy – but defamed the entire family*

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January 2020