



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL APPEAL (AGAINST ACQUITTAL) NO. 488 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MRS. JUSTICE M. K. THAKKER

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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DINESHKUMAR BHEMABHAI GAJJAR
 Versus
 STATE OF GUJARAT & ORS.

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Appearance:

HARSH V GAJJAR(7828) for the Appellant(s) No. 1

for the Opponent(s)/Respondent(s) No. 4

MR TUSHAR CHAUDHARY(5316) for the Opponent(s)/Respondent(s) No.

2,3

MS.VRUNDA SHAH, APP for the Opponent(s)/Respondent(s) No. 1

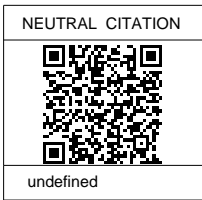
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CORAM: HONOURABLE MRS. JUSTICE M. K. THAKKER

Date : 09/05/2024

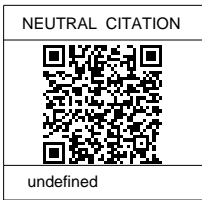
ORAL JUDGMENT

- The present appeal is filed under section 378 of the Code of Criminal Procedure, 1973 challenging the judgment



and order of acquittal dated 30.12.2022 passed by the learned Judicial Magistrate First Class, Shihori in Criminal Case No. 810 of 2015 acquitting the respondent-accused for the offence punishable under section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the "N.I. Act").

2. It is the case of the complainant that complainant is doing the business of taking contracts. Accused no.3 society was granted contract by Road and Building Panchayat Department, Shihori and out of the three aforesaid works, two works being (1) box culvert road on Aslali to Sudrosan road and (2) Causeway on the same road were allotted to the complainant by the accused persons. The Power of Attorney was also executed on 31.05.2008 and thereafter, the complainant has taken over the charge on behalf of the accused no. 1 to 3 of above contracts. All the communications were addressed in the name of accused no. 3 and the bills were also raised by the accused no.3. Complainant were given the authorization to carry out the above works and the complainant was first paid Rs.4,42,000/- as the payment of expenses by the accused persons. Thereafter, work

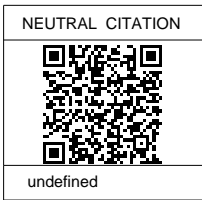


was further carried out and the complainant had invested his own funds on the assurance that on receiving the bill amount, the said funds would be repaid.

2.1. Thereafter, the complainant was informed not to carry out the work and to provide the accounts of the expenses. After calculating the amount, it came to Rs.5,50,000/- and for that accused no.1 and 2 have signed the cheque which was of accused no.3 *Mandli*. On depositing the said cheque with the bank, it returned with an endorsement of “payment is stopped by drawer”.

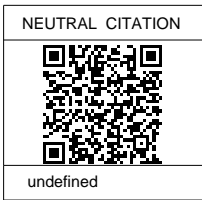
2.2. Thereafter, on following the due procedure under the N.I.Act, private complaint came to be filed wherein, the summons came to be issued to the accused under section 204 of Cr.P.C on recording the verification of the complainant and on appearance of the accused, plea came to be recorded below Exh. 15 and 16 wherein, the accused pleaded not guilty and claimed to be tried. Therefore, to bring home the guilt of the accused, the complainant himself was examined below Exh.25 and has produced five documentary evidences.

2.3. Thereafter, on filing the closing pursis, statement

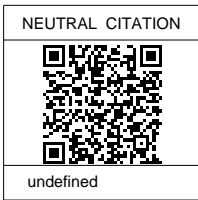


under section 313 of Cr.P.C came to be recorded wherein, the accused pleaded that the advance cheque which was lying with the complainant were misused. It is further contended that the cheque which was deposited of Gujarat Industrial Bank which went in liquidation in the year 2008 and no work of clearing were carried out by the bank. However, in the return memo, alteration is carried out and to grab the money from the accused persons, false case was created.

- 2.4. Learned trial court after considering the evidence and the argument advanced by the learned advocates for the respective parties was pleased to acquit the respondent accused from the charges leveled against them which is the subject matter of appeal before this Court.
3. Heard learned advocate Mr.H.V.Gajjar for the appellant-original complainant.
4. Learned advocate Mr.H.V.Gajjar submits that though presumption which is in favour of the complainant was not rebutted by the respondent-accused neither signature was disputed, the learned trial court has acquitted the respondent-accused without cogent reasons.



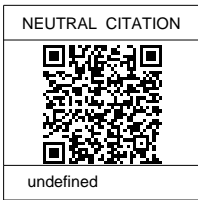
- 4.1. Learned advocate Mr.H.V.Gajjar submits that in the defence the respondent-accused had created a story that the alteration was made in the return memo and no initial was made by the Bank Officer. However, to establish this probable defence no bank officer was examined.
- 4.2. Learned advocate Mr.H.V.Gajjar further submits that evasive reply of demand notice was given by the respondent-accused and though respondent-accused fails to establish any convincing circumstances in their defence learned trial court has acquitted the respondent-accused from the charges.
- 4.3. Learned advocate Mr.H.V.Gajjar submits that even the defence which was created itself suggests that though bank was closed in the year 2008 the cheque was utilized and the same was issued in favour of the complainant in the year 2010 with a view to defraud the complainant. However, without considering the same learned trial court has acquitted the respondent-accused by holding that complainant fails to establish the legally enforceable debt.
- 4.4. Learned advocate Mr.H.V.Gajjar submits that while



acquitting the respondent-accused learned trial court has discarded the material evidence. Therefore also, the judgment and order of acquittal requires to be interfered with. As this matter was decided at admission stage finally this Court has not issued any notice to the respondent-accused.

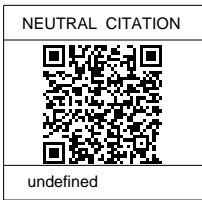
5. Considering the arguments advanced by the learned advocate for the appellant-original complainant and examining the record and proceedings thoroughly, it transpires that the private complaint came to be filed by the complainant alleging that for the payment of the work which was carried out by the complainant, the cheque which was issued on 07.10.2010 for the amount of Rs.5,50,000/- was returned with an endorsement of "payments stopped by drawer". To establish the case of the complainant, he has produced the cheque below Exh.20, return memo issued by the Gujarat Industrialist Co-Operative Bank to Dena Bank below Exh.21 and the communication addressed by Dena Bank to the complainant below Exh.22.

- 5.1. It appears from the above evidence that cheque is of 07.10.2010 and in the return memo which was stated to



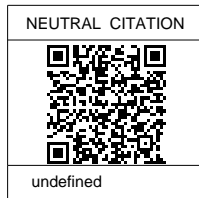
have been issued by the Gujarat Industrial Co-operative Bank below Exh 21, the date appears to have been altered. In the communication which is produced below Exh.22, no cheque number is mentioned from the above evidence, it can be concluded that the alteration is made in the return memo issued by the Gujarat Industrial Co-operative Bank by the complainant. The respondent has produced the communication dated 12.07.2022 issued by the Industrial Bank stating that the industrial bank is closed from 20.09.2008. The contention of the complainant that old cheques were issued for discharging the liability by the respondent-accused in favour of the complainant, if that is to be examined in light of the evidence which is produced by the complainant i.e Exh.21 and 23, it transpires that in Exh.21 no initials were made in the return memo in which the date is altered and in Exh.22 communication addressed by Dena Bank, no cheque number is mentioned.

5.2. In addition to the above aspects, certain admissions were made by the complainant during the cross-examination wherein, it was admitted that in the return



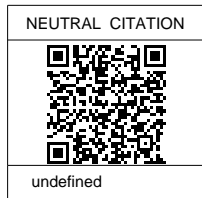
memo the old date is strike out and new date is mentioned where no initials of the Bank Officer is made. Power of Attorney was executed on 31.05.2008 wherein, the clause is mentioned that when the cheques were issued in favour of the complainant, along with five letter pads having stamp and signature for the purpose of the constructions which were agreed to have been carried out on behalf of the accused no.3 *Mandli*. The cheque no. 100801 on 18.07.2008 wherein amount of Rs.4,42,406/- was withdrawn by the complainant. The disputed cheque i.e cheque no.100803 was one of the cheque which was given at the time of execution of the Power of Attorney. It is further admitted that as per the terms of the Power of Attorney, the work is to be completed within a period of three months and the amount which was claimed i.e Rs.5,50,000/- no details of the statement of accounts were produced.

5.3. In his cross-examination the complainant does not recollect that on which date this work was completed. It is admitted that the accused has issued the notice on 20.10.2010 demanding the blank cheques. The suggestion with regard to filling up the column of name,



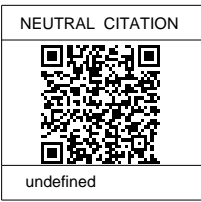
date and the amount by the complainant was denied and for that the complainant has filed an application for sending the disputed cheque to the hand writing expert below Exh.39. The learned trial court has passed an order allowing the said application below Exh.39 on 20.01.2018, however, thereafter, it transpires from the record that no such opinion was produced by the respondent-accused.

5.4. The alteration which is suggested to have been made in the return memo wherein, the date appears to have been altered. It is settled law that the person who is in the custody of the document subsequent to this execution, should there be any alteration, has to discharge burden of establishing that it is not altered. During the cross-examination though the complainant admitted that there is an alteration in the date on the return memo, however, no such explanation was given rather had made any specific statement. Though it is an admitted position that this return memo was presented by the complainant in support of his case. Therefore, conclusion can be drawn that dates in the return memo were altered by the complainant in order to claim the



cheque amount and to file the impugned complaint.

- 5.5. Additionally, in the communication addressed by Dena Bank with regard to dishonouring of the cheque, no cheque number is mentioned. Learned trial court has acquitted the respondent-accused by holding that disputed cheque is one of the cheques which were given at the time of execution of Power of Attorney and as the work which was to be completed within a period of two months was not done, therefore, after giving the amount of Rs.4,42,406/- by way of one of the cheques, the complainant was instructed to discontinue the work.
6. Learned trial court ultimately, concluded that false complaint is filed by misusing the signed cheque of the accused persons and complainant has failed to establish the legally enforceable debt against the accused persons. This Court is of the view that from the evidence and the material placed on record, no infirmity or illegality is found with the impugned judgment and order of acquittal passed by the learned trial court. Hence, this appeal preferred by the present complainant deserves to be dismissed.
7. Resultantly, present appeal is dismissed. The impugned



judgment and order dated 30.12.2022 passed by the learned Judicial Magistrate First Class, Shihori in Criminal Case No. 810 of 2015 is confirmed.

ARCHANA S. PILLAI

(M. K. THAKKER,J)