

(2026) 01 BOM CK 1368
In the Bombay High Court
Case No : Criminal Appeal No. 1120 Of 2011

Vijaykant Motilal Kothari

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 28-01-2026

Acts Referred:

Negotiable Instruments Act, 1881 — Section 138

Code of Criminal Procedure, 1973 — Section 313, 378, 386(b)(i)

Citation : (2026) 01 BOM CK 1368

Hon'ble Judges : Dr. Neela Gokhale, J

Bench : Single Bench

Advocate : Abhishek Pungliya, Poonam P. Bhosale, Subhash Jha, Siddharth Jha, Sumit Upadhyay, Law Global Advocates

Final Decision : Dismissed

Judgement

Dr. Neela Gokhale, J

1. This Appeal assails the Judgment and Order dated 31st January 2011 passed in Criminal Appeal No. 127 of 2008 by the Additional Sessions Judge, Pune whereby the Accused namely, Shri Lalit Amrutlal Shah, Rajendra Amrutlal Shah, Devendra Amrutlal Shah, Amit Lalit Shah and Apul Lalit Shah stand acquitted of the offences punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short 'NI Act') under Section 386(b)(i) of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') The Trial Court namely, the Judicial Magistrate, First Class ('JMFC'), Court No.8 (Link), Pune in S.C.C. No. 0420758 of 2006 had convicted the Accused in the said offence.

2. By order dated 19th December 2011, while admitting the Appeal, this Court recorded its view that the impugned Judgment and Order required re-consideration. Hence, leave to appeal was granted.

3. The facts of the case, in brief, are as under: -

3.1 The Appellant is the Original Complainant. The Respondent No.1 is the State

of Maharashtra. The Respondent Nos. 2 to 7 are the Original Accused, i.e., the Respondent No.2 is a Partnership Firm and the Respondent Nos. 3 to 7 are its partners.

3.2 As discerned from the complaint, it appears that in July 2004, one Mr. Hirachand Raichand Pagaria took a hand loan of Rs.56,50,000/- from the Complainant. Mr. Pagaria agreed to repay the hand loan with interest. It is contended that the Accused, being close friends of Mr. Pagaria, undertook to satisfy the loan amount taken by Mr. Pagaria. Hence, the Respondent No.3 herein (Original Accused No.2), issued a cheque bearing No.327171 dated 31st January 2006 for an amount of Rs.78,00,000/- drawn on Bank of Baroda, Gultekdi Branch, Pune in favour of the Original Complainant. After the issuance of the cheque, Mr. Pagaria and the Accused,

by letter dated 20th January 2006, requested the Complainant not to deposit the cheque until 5th February 2006.

3.3 Another request was made to the Complainant to not deposit the cheque till 17th February 2006, as Mr. Pagaria was yet arranging the amount. Ultimately, the cheque was deposited in the Bank of Maharashtra, Khadki Branch, Pune, and was dishonoured, with an intimation dated 25th February 2006 issued to the Complainant.

3.4 A legal notice ensued from the Complainant. However, the said notice was not replied to by the Respondent No.2 herein (Original Accused No.1). Hence, the Complainant made the complaint under Section 138 of the NI Act on 8th May 2006 before the Trial Court. Process was issued. The accused appeared and denied the charges against them. The Complainant examined himself and 3 others, namely, Vilas Kashinath Shelke, a clerk working in the office of the Deputy Registrar of Partnership Firms; Smita Pangarkar, the Manager of Bank of Baroda, Gultekdi Branch and Dilip Lunawat, a person stated to witness the handing over of a cheque of Rs.78,00,000/- by the Respondent No.3 to the Complainant. The Respondent No.5 (Original Accused No.4) testified on behalf of all the Accused. Statement under Section 313 of the Cr.P.C. was recorded; arguments were heard, and the Trial Court convicted all the accused for the offence punishable under Section 138 of the NI Act by Judgment and Order dated 1st March 2008.

4. The Accused preferred an Appeal before the Additional Sessions Court, Pune, against their conviction. By Judgment and Order dated 31st January 2011, the Appeal was allowed, and the judgment and order of the Trial Court were set aside. It is this Judgment and Order, which is impugned in the present Appeal.

5. Before advertence to the rival submissions, it is necessary to discuss the principles laid down by the Supreme Court governing the scope of interference by the High Courts in an appeal against acquittal, assailing the finding of acquittal of the accused by the Trial Court. The Supreme Court in its decision in the matter of Rajesh Prasad v. State of Bihar & Anr.1 held as below:-

"29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal in the following words: (Chandrappa case [Chandrappa v. State of Karnataka, (2007) 4 SCC 415]

"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Criminal Procedure Code, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseology are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

6. Further, in the case of H.D. Sundara & Ors. v. State of Karnataka² the Supreme Court summarized the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 of Cr.P.C. as follows:

"8.8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to re appreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the

evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

7. Thus, it is beyond the pale of doubt that the scope of interference by an Appellate Court for reversing the judgment of acquittal recorded by the Trial Court in favour of the Accused has to be exercised within the four corners of the following principles:-

(a) That the judgment of acquittal suffers from patent perversity;

(b) That the same is based on a misreading/omission to consider material evidence on record;

(c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

8. The Appellate Court, to interfere with the judgment of acquittal, would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the Trial Court.

9. In light of the above legal principles, I now proceed to analyse the findings in the present case, leading to the acquittal of the Accused. Two legal issues arise for my consideration in the present matter. Firstly, whether in the absence of any evidence of the cheque being issued in discharge of a liability of a third party, the offence under Section 138 of the NI Act can be held to have been committed. Secondly, whether a partner/director can be prosecuted in the absence of any specific averment in the complaint regarding the involvement of the Accused in the commission of an offence and whether a conviction can be maintained against such an Accused in the absence of any evidence of his participation in the affairs of the Firm.

10. Insofar as the first issue is concerned, I have gone through the deposition of the witnesses. The Complainant has examined himself and has deposed regarding the hand loan taken by Mr. Pagaria. According to him, the Accused came forward to undertake the responsibility of payment of the hand loan. He has repeated that the Accused requested him to not deposit the cheque till 5th February 2006. However, in his cross-examination, he has admitted that he is unable to specifically state which of the Accused was in charge of the affairs of the Firm at the relevant time. Thus, the blanket statement made by the Complainant in his chief-examination regarding the Accused coming forward to accept the liability of Mr. Pagaria is of no relevance, as he is not aware of the specific role of any of the Accused in the offence.

11. Similarly, none of the witnesses examined by the Prosecution has been able to prove beyond a reasonable doubt that any of the Accused took over the liability of Mr. Pagaria. There is neither any document nor any record of such acceptance of liability. Save and except the bare statement of the Complainant in his chief-examination in that regard, the Complainant is unable to prove the same. In fact, his answers in the cross-examination demolish his case.

12. I have also gone through the decisions of the various Courts, including the Supreme Court, as cited by both parties. The findings of the Sessions Court that the Complainant never had any financial relations with the Accused at any time before the issuance of the cheque are correct and need no interference.

13. Furthermore, the Complainant is unable to explain how the amount of the hand loan of Rs. 56,50,000/- taken by Mr. Pagaria has risen to Rs.78,00,000/-, which is the amount of the cheque dishonoured. There is no explanation regarding the rate of interest to justify the increase in the amount, and no attempt is even made by the Complainant to give any explanation in that regard. For this reason also, the assertion of the Complainant that the cheque was issued by the Accused against repayment of the hand loan taken by Mr. Pagaria is far-fetched. There is no infirmity in the findings of the Sessions Court that there was no privity of contract between the Complainant and the Accused.

14. Insofar as the second aspect of the matter is concerned, save and except a bald averment in paragraph 1 of the complaint made before the JMFC, Pune that the Original Accused Nos. 2 to 6 are responsible for the day-to-day affairs and conduct of the business of the Accused No.1-Firm, there is no specific averment in the complaint explaining the role of any of the Accused in the partnership firm. In its recent judgment in the matter of Kamalkishore Shrigopal Taparia v. India Ener-Gen Private Limited & Anr.³, the Supreme Court, while discussing its earlier judgments, has held that mere designation as a director is not sufficient; specific role and responsibility must be established in the complaint. In N.K. Wahi v. Shekhar Singh⁴, the Court in paragraph 8 observed as under:

"8. To launch a prosecution, therefore, against the alleged Directors there must be a specific allegation in the complaint as to the part played by them in the transaction. There should be clear and unambiguous allegation as to how the Directors are in-charge and responsible for the conduct of the business of the company. The description should be clear. It is true that precise words from the provisions of the Act need not be reproduced and the court can always come to a conclusion in facts of each case. But still, in the absence of any averment or specific evidence the net result would be that complaint would not be entertainable."

15. Upon perusal of the record and submissions of the parties, it is evident that none of the Accused has any legal debt or other liability towards the Original Complainant nor is there any evidence to indicate as to which of the partners was responsible for the day-to-day conduct of the business involving taking over

of the liability of Mr. Pagaria.

16. Considering the aforesaid discussion, in my view, the impugned Judgment and Order of acquittal does not suffer from any patent perversity and is not based on any misreading/omission of the Sessions Court in considering the material evidence on record. In these circumstances, I am not inclined to reverse the Judgment of acquittal rendered by the Sessions Court.

17. The Appeal is thus, dismissed.