Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO.39/2017

KALA MINES AND MINERALS,
A registered partnership concern
having their office at B-Block, FO 32
35, Baboy Commerce Centre, through
its Partner Shri Bipinchandra S.
Kantak @Shri Bipin S. Kantak major,
married Businessman, r/o Aquem,
Margao, Goa.

... APPELLANT

Versus

1.SHRI. M. V. KRISHNAMURTHY
major, married, businessman,
Proprietor of Business India Inc., 370,
9th Cross, 3rd Main
Annapoorneshwari Nagar,
Srigandhada Kaval, Bangalore

2. BUSINESS INDIA INC.,
112/75 A, 8th Main, 11 Block, BDA
layout, Nagarbhavi, Bangalore.
through its Proprietor Shri. M. V.
Krishnamurthy, major, married,
r/o Srigandhada Kaval, Bangalore.

3. STATE OF GOA
through Public Prosecutor
High Court of Bombay at Goa, Panaji.

... RESPONDENTS

Mr Ajit Kantak and Mr Raunak Kantak, Advocates for the Appellant.

Mr D. Vernekar and Mr J. Velip, Advocates for Respondent Nos.1 and 2.

Mr S. G. Bhobe, Public Prosecutor for the Respondent No.3-State.

CORAM: **ASHISH S. CHAVAN, J.**

Reserved on : **27th APRIL 2026**
Pronounced on: **4th MAY 2026**

JUDGMENT:

1. By way of this Appeal the Appellant (original complainant) has challenged the acquittal of the Respondent No.1 (original accused), Proprietor of Respondent No.2, arising out of proceedings under Negotiable Instruments Act (N.I. Act), vide order dated 30.09.2015 passed by the Additional Sessions Judge, Panaji.

2. On 09.07.2004, the Appellant filed a complaint under Section 138 of the N.I. Act before the learned JMFC, Panaji against the Respondent Nos.1 and 2 for offence punishable under Section 138 of the N.I. Act arising out of dishonour of cheque dated 24.05.2004. Vide order dated 11.09.2014, the learned JMFC, Panaji held the Respondent Nos.1 and 2 guilty of offence punishable under Section 138 of the N.I. Act and sentenced them to simple imprisonment of six months with a direction to pay compensation of Rs.38,00,000/- to the Appellant and in default to undergo simple imprisonment of one year.

3. Aggrieved by the aforesaid order, the Respondent Nos.1 and 2 approached the Sessions Judge, North Goa, Panaji vide Criminal Appeal No.129/2014. Vide order dated 30.09.2015 (impugned order), the learned Sessions Judge, North Goa, Panaji allowed the Appeal of the Respondent Nos.1 and 2 and set aside

the judgment of conviction passed by the learned JMFC, Panaji and proceeded to acquit the Respondents herein.

4. Aggrieved by the aforesaid order of acquittal, the Appellant has approached this Court by way of the present Appeal. Vide order dated 01.08.2017, this Court granted the Appellant leave to appeal.

5. Heard Mr Ajit Kantak for the Appellant and Mr D. Vernekar for Respondent Nos.1 and 2. Perused the record.

6. On behalf of the Appellant, the impugned order was assailed on several grounds. *Firstly,* it was sought to be argued that the main criteria on which the acquittal was based is that the cheque was dated 06.03.2004 on which date there was no debt or other liability payable by the Respondent Nos.1 and 2. Admittedly, 06.03.2004 was the date on which the contract was signed therefore there was no question of any liability arising on that day. The liability arose after fifty days from 06.03.2004 when the Respondents did not supply 40,000 MT of iron ore in terms of the contract. Hence, this observation of the learned Sessions Judge reflected in the impugned order is not tenable in law. *Secondly,* it was sought to be canvassed by the Appellant that a contract was signed by and between the Appellant and the Respondents whereby the Respondents were to supply 40,000 MT of iron ore with the iron content of 63.6% with a condition that any supply below 62% was to be rejected. The Appellant had given a demand draft of Rs.35,00,000/- in favour of the

Respondents and this deposit was to be held by the Respondents throughout the tenure of the contract and was to be apportioned towards the price of the last delivery of the iron ore. The Respondents committed a breach of the contract by not delivering the iron ore in terms of the quantity and quality. The Appellant therefore issued a letter calling upon the Respondents to return the demand draft of Rs.35,00,000/-. However, the Respondents encashed the demand draft on 09.03.2004. The cheque, according to the Appellant was handed over to the Respondents as a collateral security. Since the iron ore was not delivered in terms of the quality and quantity and since the demand draft of Rs.35,00,000/- was encashed, the Appellant was entitled to refund of the amount by presenting the cheque. However, upon presentation, the cheque was dishonoured. This fact was not considered by the learned Sessions Judge in his impugned order.

7. *Thirdly,* it was submitted on behalf of the Appellant that the learned Sessions Judge in the impugned order has failed to take into consideration that the Respondent No.1 has not disputed or denied his signature on the cheque and the Appellant has thus raised the foundational facts required to invoke the presumption under Section 118 and 139 of the N.I. Act in favour of the Appellant. The Appellant has placed reliance on the judgment of ***K. N. Beena v/s. Muniyappan – (2001) 8 SCC 458*** in support of its submissions.

8. *Fourthly*, it was sought to be canvassed on behalf of the Appellant that the learned Sessions Judge has erred in holding

that the Respondent Nos.1 and 2 had rebutted the presumption under Sections 118 and 139 of the N.I. Act when in fact, Respondents have neither assailed the presumption during the cross-examination nor stepped into the witness box to rebut these statutory presumptions. *Fifthly*, it was contended that the learned Sessions Judge failed to appreciate that the iron ore sold and supplied by the Respondents was of inferior quality and also not of the same quantity as contemplated in the contract. Hence, it was of no use to the Appellant. Mere supply of the iron ore by the Respondents to the Appellant without adhering to the quality, quantity and timeline was a breach of the terms of the contract and hence, the Appellant was justified to deposit the cheque which was given as a guarantee in lieu of the amount of Rs.35,00,000/- appropriated by the Respondents by encashing the demand draft. This fact was disregarded by the learned Sessions Judge in the impugned order.

9. Per contra, learned Advocate for the Respondents countered the aforesaid submissions *in seriatiam*. Responding to the first submission, it was fairly admitted by the Respondents that it is a settled position of law that the liability against the cheque in question could arise not on the date of issuance of the cheque but on the date when the cheque was presented. The cheque was admittedly issued on 06.03.2004 and was presented for encashment on 24.05.2004. It was dishonoured on 02.06.2004. Even assuming that the cause of action arises on the date of presentment of the cheque, it was contended by the Respondents that as on 24.05.2004 or 02.06.2004, there was no enforceable

liability against the subject cheque and hence, the impugned order cannot be defaulted.

10. Responding to the second submission of the Appellant, it was argued by the Respondents that the Appellant has raised the question of the issue of inferior quality, less quantity and non-adherence to the timelines stipulated in the contract. However, the issue of the inferior quality was based on the analysis report of S. K. Mitra Pvt. Ltd., the sample assayers (analysts) whose analysis report was necessary to determine the issue of quality of the iron ore in terms of the contract between the parties. The cheque was presented for encashment on 24.05.2004. The report of S. K. Mitra Pvt. Ltd. is dated 09.07.2004. The report opines that the analysis of the iron ore yields percentage of 58.43% of iron content in the sample analysed by them out of the material delivered by the Respondents which is less than the percentage stipulated in the contract. It is sought to be argued that the Appellant was not aware that the goods were of inferior quality prior to 09.07.2004. However, the cheque was deposited on 24.05.2004, i.e. prior to the date of the report of S. K. Mitra Pvt.Ltd. hence, on the date of the presentation of the cheque and its subsequent dishonour, the Appellant was not aware as to whether the goods were of inferior quality or not.

11. Responding to the third submission of the Appellant, it was argued by the Respondents that it is a settled position of law that the statutory presumptions under Sections 118 and 139 of the N.I. Act are triggered only when the factual foundation necessary

to establish the case of the complainant in a cheque bouncing case, is established. In the present case, the contract entered into between the parties does not reflect the subject cheque. Thus, it is relevant to examine how the subject cheque came into the hands of the Appellant. The Appellant in the present Appeal had prosecuted the Respondent Nos.1 and 2 along with some other persons including one Pandurang alias Bhai Naik by way of a private complaint before the JMFC, Margao, Goa. In the said complaint, the Appellant had made several allegations. It was alleged that the Respondent No.2, proprietary concern along with the Respondent No.1 and other persons who were connected with the Respondent No.2 colluded with Pandurang alias Bhai Naik. It was alleged that the said Pandurang alias Bhai Naik handed over to the Appellant the cheque (the subject cheque in the present Appeal). It was against this cheque that the Appellant allegedly handed over to Pandurang alias Bhai Naik the demand draft (which also forms part of the present Appeal). The aforesaid complaint was filed on 01.08.2005 which was later in point of time than the complaint under Section 138 of the N.I. Act which was filed on 09.07.2004. There are several discrepancies between the stand taken by the Appellant in the Section 138 complaint and the cheating complaint. In the Section 138 complaint, the Appellant has taken a stand that the cheque and the demand draft were issued to the Appellant by the Respondents whereas in the cheating complaint, the Appellant has alleged that the cheque and the demand draft was handed over to Pandurang alias Bhai Naik who in turn, is alleged to have given the same to the Appellant. It is further submitted that the cheating complaint was withdrawn

by the Appellant on 28.04.2014. The Respondents have relied upon an order of this Court dated 29.01.2014 in Criminal Writ Petition No.38/2012 which records that the Appellant will not dispute the genuineness of the certified copy of the aforesaid cheating complaint if filed in the 138 complaint from which the present proceedings arise. Accordingly, a copy of the cheating complaint was produced and exhibited before the learned JMFC and considered by the learned Sessions Judge. It is further submitted that the said Pandurang alias Bhai Naik was never examined by the Appellant during the course of the trial. This fact assumes significance considering the variance between the stand of the Appellant in the cheating complaint *vis-à-vis* the 138 complaint. This discrepancy goes to the root of the matter as submitted by the Respondents since it raises a question as to how the Appellant came in the possession of the subject cheque. It was also pointed out that the Section 313 statement of the Respondent No.2 also mentions that the cheque was given to one Venugopalan and it was a blank cheque signed by the Respondent No.1.

12. Responding to the concluding submissions of the Appellant, it was argued by the Respondents that the subject cheque was issued as a collateral security by the Respondents and it is a crystallised position of law that in order to make the subject cheque enforceable against any liability, it was incumbent upon the Appellant to show that as on the date of presentation of the subject cheque, there was enforceable liability in terms of the amount reflected in the said cheque. Since it is demonstrated that

there was no enforceable liability against the cheque as on the date of its presentation, it remains a collateral security which could not have been presented for encashment by the Appellant. It was further argued that by his own admission, the authorised representative of the Appellant – PW1, has deposed that quantity of 1393.10 MT of iron ore was supplied to the Appellant. This is indicated in the letter dated 15.05.2004 by the Appellant to the Respondents. The grievance of the Appellant is not that the iron ore was not supplied but that the quality of the supplied iron ore was less than the quality prescribed by the contract. Even assuming that there was a dispute between the Appellant and the Respondents on the quantity of the iron ore, the fact remains that the Appellant acknowledge that the 1393.10 MT of iron ore has been supplied to them and thus, it becomes a disputable question of fact as to what was the amount owed by the Respondents to the Appellant. It was submitted that this dispute was mandated to be resolved by way of an arbitration between the parties as reflected in the terms of the contract. However, using the false claim of inferior goods supplied, the Appellant misused the cheque which was in their illegal possession and deposited the same. Hence, the learned Sessions Judge was right in acquitting the Respondents.

13. Before appreciating the merits, it must be emphasised that the scope and parameters of examining an appeal against acquittal are set out by the Hon'ble Apex Court in various judgments, some of which are *C. Antony v/s. Raghavan Nair – (2003) 1 SCC 1, K. Prakashan v/s. P. K. Surendran – (2008) 1 SCC 258* and

State of Goa v/s. Sanjay Thakran – (2007) 3 SCC 755. The principles that can be culled out from the aforesaid judgments are that while dealing with appeals against acquittal, the Appellate Court must bear in mind that there is presumption of innocence in favour of the accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court. The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal. Unless the conclusions reached by the trial court are palpably wrong or based on an erroneous view of the law, or if such conclusions, allowed to stand, are likely to result in grave injustice the appellate court should be reluctant to interfere with such conclusions. Merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view.

14. Examining the impugned judgment in the light of the aforesaid parameters, the learned Sessions Judge has observed that the pleadings in the complaint show that the subject cheque was issued by the Respondents as a guarantee for due performance of the contract. Admittedly, the supply of iron ore was to be made by the Respondents to the Appellant within the specific period as agreed upon in the contract and the amount of Rs.35,00,000/- paid by the Appellant under the demand draft was liable to be adjusted towards the price of the last delivery. The impugned judgment after examining the terms of the contract between the parties observes that the contract nowhere speaks about any

condition that the Respondents shall hand over the subject cheque in favour of the Appellant towards due performance of the said contract. Dealing with the report of S.K. Mitra, the learned Sessions Judge observes that as on the date of the report, there was no occasion for the Appellant to find out that the iron ore supplied to it by the Respondents was of sub-standard quality. Therefore, till the date of the report the Appellant was not entitled to deduct any price of such iron ore from the subsequent consignment. The first time that the Respondents are made aware of the alleged sub-standard ore is vide letter dated 15.05.2004. By this letter, the Appellant has admitted that the quantity of the iron ore was 1393.105 MTs and the average quality was 59.10% Fe. Therefore it cannot be said that as on the date of presentation of the cheque, there was any debt or liability on the part of the Respondents to pay Rs.35,00,000/- to the Appellant. Differences or disputes arising from the performance of the contract is clearly the subject matter of arbitration as set out in clause 12 of the said contract. Unless the price of the goods supplied is crystallised, it cannot be said that the liability against the cheque was ascertained or admitted.

15. The learned Sessions Judge in the impugned order further observes that it is trite law that once the accused demonstrates by way of preponderance of probability that there is enough material to rebut the statutory presumptions, the onus then shifts on the complainant to prove that the cheque in question was issued against enforceable liability. In the facts of the present case, the learned Sessions Judge notes that the onus on the Appellant has

not been discharged. The learned Sessions Judge has also dealt with the case of the Appellant that iron ore of inferior quality was supplied by the Respondents to the Appellant. He holds that by the admission of the authorised representative of the Appellant (PW1) the iron ore was analysed firstly by Essen & Company and later on by S. K. Mitra Pvt. Ltd. This itself shows that although the contract clearly mentions that only the analysis of S. K. Mitra may be valid and binding on the parties, the Appellant has got the iron ore analysed by one Essen & Company and on the basis of this analysis, arrived at a conclusion that the iron ore was sub-standard and deposited the subject cheque without waiting for the report of S. K. Mitra. On the basis of the aforesaid findings, the learned Sessions Judge proceeds to hold that the cheque was not issued for any existing enforceable debt or liability and in view thereof, proceeded to allow the appeal and acquit the Respondents.

16. On appreciating the rival submissions, and examining the reasoning of the learned Sessions Judge, following facts emerge. It is not in dispute that the contract executed between the parties has no mention of the subject cheque. In other words, the terms of the contract between the parties are independent of the issuance, presentation and dishonour of the subject cheque. It is also not in dispute that in terms of the contract, the Respondents have supplied 1393.105 MTs of iron ore to the Appellant. The variance between the stand adopted by the Appellant in the cheating case and the 138 case as discussed hereinabove, goes to the root of the matter and raises a question mark as to whether

the cheque was handed over directly by the Respondents to the Appellant as portrayed in the 138 complaint or whether it was handed over to Pandurang alias Bhai Naik in terms of the allegations made by the Appellant in the cheating complaint. Mere subsequent withdrawal of the cheating complaint does not efface the contrary stands taken up by the Appellant. In this perspective, the non-examination of Pandurang alias Bhai Naik raises an adverse inference against the Appellant, especially in the light of the fact that the Respondents have taken up a plea that the subject cheque was a blank security cheque not meant to be deposited or encashed and that the said cheque was not given to the Appellant but handed over to Mr Venugopalan by the Respondent No.1. Thus, the Appellant has failed to raise the factual foundation required to trigger the statutory presumptions under Sections 118 and 139 of the N. I. Act.

17. Insofar as the plea raised by the Appellant that the goods supplied were of inferior quality, record indicates that the cheque was presented for encashment earlier in point of time than the date of the report of the analyst which opined that the iron ore was of inferior or sub-standard quality. Thus, at the time when the cheque was presented for encashment, the Appellant was not aware that the iron ore delivered by the Respondents was of inferior quality. Therefore, no liability corresponding to the cheque amount was crystallised as on the date of presentation of the cheque. Insofar as the dispute between the parties pertaining to the performance of the contract is concerned, unless the liability if any, qua the parties is crystallised, the same cannot be

enforced. Since the handing over, issuance, presentation and dishonour of the cheque is not linked to the contract in any manner, the liability if any, against the cheque has to be examined independently. The allegation of supply of inferior quality of iron ore is not proved by the Appellant as is evident from the aforesaid discussion and therefore it is clear that as on the date of presentation of the cheque and its dishonour, there was no existing debt or liability against the subject cheque. This Court finds that the reasoning of the learned Sessions Judge does not suffer from any infirmity. The reasoning in the impugned order is in consonance with the law and thus strengthens the presumption of innocence that has now accrued in favour of the Respondents.

18. The impugned order of acquittal does not require to be interfered with by this Court. In view thereof, the Appeal is dismissed.

19. Criminal Appeal No.39/2017 is disposed of in the aforesaid terms. Misc. Applications if any, also stand disposed of.

ASHISH S. CHAVAN, J.

Signed by: SUCHITRA NANDAN SINGBAL
Designation: Personal Assistant
Date: 04/05/2026 16:29:45