

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.664 OF 2012

M. ABBAS HAJI

APPELLANT(S)

VERSUS

T.N. CHANNAKESHAHA

RESPONDENT(S)

J U D G M E N T

DEEPAK GUPTA, J.

Delay in filing substitution application is condoned. Application for substitution is allowed and abatement is set-aside.

This appeal is directed against the order dated 22.10.2008, whereby the High Court allowed the appeal of the complainant and held the original appellant before us (since deceased), whose legal representatives are on record, liable for conviction under Section 138 of the Negotiable Instruments Act (hereafter referred to as the "Act"). He was sentenced to pay fine of Rs.5,10,000/- and in default to undergo simple imprisonment for one year.

The legal heirs, in such a case, are neither liable to pay the fine or to undergo imprisonment. However, they have a right to challenge the conviction of their

predecessor only for the purpose that he was not guilty of any offence. We have, therefore, allowed the application filed by the legal heirs to prosecute this appeal.

The case set up by the complainant was that the original appellant had borrowed a sum of Rs.5 lakhs from him and for repayment of that sum had issued a cheque on 18.11.2000 drawn on State Bank of Mysore. On presentation, the cheque was dishonoured for want of sufficient funds. Thereafter, legal notice (Ext.P4) was issued, which has been duly served upon the original appellant. According to the complainant, no reply to the said notice was received and therefore a private complaint was filed. A defence was raised by the accused that he had not signed the cheque. During the course of the trial, the original appellant got the cheque sent to the handwriting expert for comparison with the admitted signatures. It is not clear as to what were the admitted signatures which were sent to the handwriting expert but the handwriting expert opined that the signatures on the cheque were not those of the person who had written the admitted signatures. The Trial Court dismissed the complaint mainly on the ground that the handwriting expert had opined that the signatures on the cheque were not those of the original appellant.

The complainant filed an appeal to the High Court, which after considering the entire evidence, has

delivered a well reasoned judgment upsetting the judgment of the Trial Court. The reasons which weighed with the High Court were that; (1) the original appellant did not step into the witness box to state that he had not signed the cheque; (2) that the opinion of the handwriting expert was only an opinion and not conclusive; (3) that the original appellant had failed to prove that he had sent a reply to the notice sent to him by the complainant because so-called reply was not marked in evidence and no postal receipt of the same was placed on record.

It is urged before us that the High Court overstepped the limits which Appellate Court is bound by criminal cases setting aside an order of acquittal. Proceedings under Section 138 of the Act are quasi-criminal proceedings. The principles, which apply to acquittal in other criminal cases, cannot apply to these cases. As far as the present case is concerned, in addition to three reasons, given by the High Court, we are of the view that the original appellant has not even explained how the leaves of the cheque entered into the hands of the complainant. It is urged that in cross-examination of the complainant some suggestions were made that since the complainant was visiting the office of the original appellant, he had access to the same. The complainant had only admitted that he visited the office of the original appellant but he denied all the other suggestions. Thereafter, it was for the original

appellant to prove his part of the case. The High Court, in our opinion, was right in holding the original appellant guilty under Section 138 of the Act.

We see no reason to interfere in the appeal, which is accordingly dismissed.

The amount deposited by the original appellant along with interest, if any accrued thereon, can be withdrawn by the complainant.

.....J.
(DEEPAK GUPTA)

.....J.
(ANIRUDDHA BOSE)

New Delhi
September 19, 2019

**S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S**

Criminal Appeal No(s).664/2012

M.ABBAS HAJI

Appellant(s)

VERSUS

T.N.CHANNAKESHA

Respondent(s)

Date : 19-09-2019 This appeal was called on for hearing today.

CORAM :

**HON'BLE MR. JUSTICE DEEPAK GUPTA
HON'BLE MR. JUSTICE ANIRUDDHA BOSE**

For Appellant(s)

**Mr. Sharan Thakur, Adv.
Mr. Mahesh Thakur, AOR
Mr. Siddarth Thakur, Adv.
Mr. Vijay Kumar, Adv.
Ms. Sheffali Chaudhary, Adv.
Ms. Vipasha Singh, Adv.
Dr. Sushil Balwada, AOR**

For Respondent(s)

**Mr. Karunakar Mahalik, Adv.
Mr. V. Bishwanath Bhandarkar, Adv.
Mr. Sarbendra Kumar, Adv.
Mr. H.K. Naik, Adv.
Mr. Naresh Kumar, AOR**

**UPON hearing the counsel the Court made the following
O R D E R**

**Delay in filing substitution application is condoned.
Application for substitution is allowed and abatement is set-aside.**

**The appeal is dismissed in terms of the signed non-reportable
judgment.**

Pending application(s), if any, stands disposed of.

**(ARJUN BISHT)
COURT MASTER (SH)**

**(RENU KAPOOR)
BRANCH OFFICER**

(signed non-reportable judgment is placed on the file)