

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. 950 of 2001@@
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(Arising out of SLP(Crl) No. 2351 of 2001)

Vinod Tanna & Anr. ...Appellant (s)

Versus

Zaher Siddiqui & Ors. ...Respondent(s)

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Leave granted.

This appeal is directed against the judgment of the Bombay High Court refusing the prayer of the accused to quash the criminal proceedings. A proceeding had been initiated under Section 138 read with Section 142 of the Negotiable Instruments Act (for short 'the Act'), alleging that the cheque which the drawer had given, had not been honoured by the bank.

The gravamen of the accused-petitioner's case before the High Court was that the grounds on which the cheque had not been honoured would not constitute offence under Section 138 of the Act, inasmuch as the ingredients that the account-holder had no sufficient funds at the credit of his account or that the amount in the cheque exceeded the amount which the account-holder had at his credit, had not been established in the case. Even there was no direction from the drawer to stop payment and the only ground on which the cheque

appears to have not been honoured is that the drawer's signature was incomplete.

The High Court, however, having noted the aforesaid contentions, being of the opinion that in view of the judgment of this Court in Modi Cements Ltd. v. Kuchil Kumar Nandi@@
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[(1998) 3 SCC 249], refused to quash the proceedings. Hence the present appeal by the accused.

Mr. Bobde, learned senior counsel appearing for the appellants, contends that the High Court has failed to appreciate the ratio of the judgment of this Court in Modi@@
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Cements case (supra) inasmuch as in paragraph 11 of the said@@
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judgment, the Court had recorded a conclusion that it is in complete agreement with the legal proposition enunciated in Electronics Trade & Technology Development Corpn. Ltd. v.@@
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Indian Technologists & Engineers (Electronics) (P) Ltd.@@

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[(1996) 2 SCC 739] as well as K.K. Sidharthan v.@@
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T.P.Praveena Chandran [(1996) 6 SCC 369]. In these two cases,@
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the cheque in question had been dishonoured because of
insufficiency of funds or the amount exceeded the arrangement
made with the bank and in Electronics Trade & Technology@@
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Development Corpn. Ltd. (supra) the cheque had not been@@
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honoured because of the direction from the drawer regarding
stop payment. In fact a plain reading of Section 138 of the
Act makes it crystal clear that unless the conditions
precedent mentioned therein are satisfied, the said penal
provision cannot be attracted. In this view of the matter and

on the admitted facts, as referred to in paragraph 5 of the
impugned judgment, we have no hesitation in coming to the
conclusion that the High Court committed error in relying upon
the judgment of this Court in Modi Cements (supra) and
refusing to quash the criminal proceeding. We accordingly set
aside the impugned judgment of the High Court, quash the
criminal proceeding and allow the criminal appeal.

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(G.B. PATTANAIAK)@@
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New Delhi
September 17, 2001

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(RUMA PAL)@@
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ITEM No.40

Court No. 4

SECTION IIA
A/N MATTER

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No. 2351/2001

(From the judgement and order dated 05/03/2001 in CRLWP 623/94
of The HIGH COURT OF BOMBAY)

VINOD TANNA & ANR.

Petitioner (s)

VERSUS

ZAHER SIDDIQUI & ORS.

Respondent (s)

(With Appln(s). for stay)
(With Office Report)

Date : 17/09/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.B. PATTANAİK
HON'BLE MRS. JUSTICE RUMA PAL

For Petitioner (s) Mr. V.A. Bobde, Sr. Adv.
Mr. Sunil Kr. Verma , Adv.
Mr. Shivaji M. Jadhav, Adv.

For Respondent (s) Mr. Majeed Memon, Adv.
Mr. R.N. Karanjawala, Mrs.Nandini Gore,
Mrs. Manik Karanjawala and
Ms. Avantika Keswani, Advs.~

Mr. S.S. Shinde, Adv. for
Mr. S.V. Deshpande, Adv.

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

.....L.....I.....J
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Leave granted.
Appeal allowed in terms of the signed order.

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(J.S. Rawat)
Court Master

(Suneet Bala Sharma)
Court Master

(Signed order is placed on the file)