

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 264 OF 2015

M/s Sanjay Kumar Bothra & Co.,
Through its partner
Shri Sanjaykumar Zhumbarlal Bothara
Age : 50 years, Occu.: Business,
R/o Adte Bazar, Ahmednagar

.. Applicant
(Orig. Complainant)

Vs.

Shri Sunil H. Popatani
Prop. Of M/s. Guruprasad Grocery Stores
Age : 32 years, Occu.: Business,
Market Yard, Ahmednagar

and residing at :

Plot No. 263, Miskin Nagar,
In front of Krupal Ashram,
T.V. Centre Road, Ahmednagar

.. Respondent
(Orig. Accused)

Mr. L.B. Palod, Advocate for the applicant
Mr. N.B. Narwade, Advocate for the respondent

CORAM : M.T. JOSHI, J.

DATE : 20/10/2015

ORAL ORDER :

1. Heard both sides.
2. Aggrieved by the acquittal of the present respondent from the offence punishable under section 138 of the Negotiable Instruments Act, the original

complainant wants to file an appeal and, therefore, present application for leave to file appeal is preferred.

3. The applicant's case in short is that the present respondent, towards the repayment of the amount of the goods taken by him on credit, had passed the cheque in question on 29/1/2012 for an amount of Rs.1,59,898/-, however, as the cheque was returned with an endorsement that payment was stopped by the drawer, he issued statutory notice and after service of the notice, filed the complaint within limitation.

4. During trial, it has become an admitted fact that various transactions had taken place between the present applicant/complainant, which was a firm, which used to deal in the wholesale market and the present respondent who is the retailer. The complainant also admitted that the respondent has in-fact kept with him various cheques only with his own signature, as security for payment of the price. He also admitted that on the very date of issuing the cheque i.e. on 29/1/2012, the amount of Rs. 1,59,898/- was not due. He also admitted

that the cheque of the subsequent dates issued by the present respondent were in-fact honoured and due credit in the extract of account is given. Further, it was found that though the complainant stated that it was a registered partnership firm, no documents regarding the same were filed and, therefore, on both these counts, the respondent came to be acquitted.

5. Learned counsel for the respondent now places on record the true copy of the true extract of register kept by the Registrar of Firms. The same is accepted and marked as "X" for the purpose of identification. It would show that during the relevant period, the firm was registered and Mr. Sanjaykumar Bothra was the partner in the said firm.

6. Upon hearing both sides, and upon considering the material on record, as detailed supra, it is an admitted position that the present respondent had as a security, kept with the firm various cheques only with his signatures and the same were used from time to time by the complainant towards the payment. It is already an admitted fact that after 29/1/2012, various cheques

were issued and were honoured and credit of the same is also given in the extract of the accounts filed by the complainant. It is also an admitted fact that the amount in the disputed cheque does not match with the account kept by the applicant/complainant.

7. In that view of the matter, since the learned Judicial Magistrate First Class, Ahmednagar has taken into consideration all these facts, in the present application for leave to file appeal against the order acquittal, in my view, no case is made out. Application is accordingly dismissed. Leave refused.

[M.T. JOSHI]
JUDGE

arp/