

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 1091 OF 2015

Mr. Rajesh Kumar Kedia s/o.
Late Onkarmal Kedia

....Applicant

Versus

M/s. Videocon Industries Ltd.,

....Respondent.

Mr. S.L.Bhapkar, Advocate for applicant.

Mr. L.B. Palod, Advocate for respondent.

CORAM : T.V. NALAWADE, J.

DATED : 12th June, 2015.

ORDER :

1. The revision is filed by the accused from S.T.C. No. 484/2008 which is pending in the Court of Judicial Magistrate, First Class, Ahmednagar. The case is filed for offence punishable under section 138 of Negotiable Instruments Act. The application at Exh. 167 was filed by the accused for sending some record to hand writing expert for comparison of hand writing and signatures. This was done after the case was at flag end. The learned J.M.F.C. has rejected the application by observing that it is nothing but delaying tactics and there is no need of expert opinion in respect of the contentions made with regard to the documents. The learned J.M.F.C. has considered implication of

provisions N.I. Act. Both the sides are heard.

2. The complainant is a manufacturer of electronic gazettes and the accused is the proprietor of a enterprise, dealer in the gazettes and electronic items. The accused runs his business in Zarkhand.

3. It is the case of complainant company that the accused used to give cheques in respect of the items delivered to him from time to time and they used to reconcile accounts. It is contended that on 15.9.2007 the accounts were reconciled and it was noticed that the accused was in dues of Rs. 40,91,611. It is contended that the accused acknowledged this due amount and executed the promissory note and continuing security bond in favour of complainant company. It is contended that the cheque of this amount was given by the accused and it was deposited for encashment on 23.10.2007 in the bank of complainant company. It is contended that the cheque bounced with remark that "since the account closed". It is contended that the procedure was followed, statutory notice was given, but the accused did not make the payment of cheque amount. The complaint came to be filed on 4.2.2008.

4. The evidence on affidavit was given by the complainant on 7.10.2008. It appears that the accused sought many adjournments and ultimately on 10.1.2014 one order was required to be made. It was observed that the Court may presume that the accused had no interest in cross examination and the accused was declining the cross examination. Such order was made on 11.10.2014 and as cross examination was not made, actually the order of "cross declined" was made on 18.9.2014. Then opportunity was again given for cross examination and the complainant was cross examined.

5. The statement of accused is recorded under section 313 of Criminal Procedure Code. He filed written say also under section 313 of Cr.P.C.

6. The accused had not replied statutory notice and he has contended that he has not received statutory notice. On the basis of some cross examination and the defence taken during under section 313 of Cr.P.C. in the application at Exh. 167, the accused requested for sending the documents like Exh. 115, 138, 139, 140, 159 and 161 to hand writing expert. He wants to prove that Exh. 159, letter dated 2.5.2006 was given by him to complainant company to inform that he had closed the account

and the cheques handed over to the company need to be returned to him. He wants to show that one of the officer of the complainant company received copy of this letter and made such endorsement on 4.5.2006. At Exh. 115, there is one attribute form of complainant company bearing signature of the same officer and so, accused wants that signature appearing on Exh. 115 to be compared with the signature appearing on Exh. 159. Thus, the accused wants to prove that on 4.5.2006 he has closed the account and so, the cheque in question could not have been presented for encashment by the complainant.

7. Exh. 161 is a letter of accused in which he has mentioned that there was reconciliation of account for the period ending on 19.12.2006. He had contended in the letter that though as per the reconciliation in the accounts of the complainant company, the amount of Rs. 41,44,754/- was shown to be due from the accused, as per the case of accused, the actual amount due was Rs. 30,64,729/-. The accused wants to prove that this letter was accepted by one officer of the complainant company, who is examined in the Court and the contention was confirmed. This letter was given on 19.12.2006.

8. Exhs. 138 and 139 are the promissory note and

continuing security bond. They are dated 15.9.2007. The amount of Rs. 40,91,611/- is mentioned. The accused is admitting his signatures appearing on these documents executed in favour of the complainant company. Exh. 140 is the cheque in question and it is for the amount of Rs. 40,91,611/-. The number of cheque is 254716. At Exh. 158, there is a copy of letter given to complainant company by the accused in which cheque No. 254716 is mentioned. The accused wants to prove that on 17.4.2006, he had informed to complainant company that four cheques were given in respect of the supply of goods which was to take place in future and they were to be cleared before 30.4.2006. He wants to prove that this letter was also received by the complainant company on 18.4.2006. Thus, accused wants to show that he had given the cheque in April 2006, but the contents of the cheque were written subsequently and it was shown to be given on 27.3.2007 and it was misused.

9. This Court is avoiding to appreciate the aforesaid material and make some observations regarding aforesaid material and circumstances. That is the job of the Trial Court. One thing can be said that the accused wants to prove in the case that he had given blank cheques which were signed by him. He wants to prove that the cheques were given as against the

proposed delivery or by way of security and in the year 2006. The accused wants to prove that before depositing of the cheque he had informed his own bank that he had closed the account and he had informed to the complainant company also accordingly and so, complainant company ought not to have deposited the cheque. The accused wants to prove that there is dispute regarding amount due from him. All these defences can be considered by the Trial Court on the basis of the material available on the record.

10. The learned counsel for the accused placed reliance on the case reported as **1996 (6) SCC 369 [K.K. Sidharthan Vs. T.P. Praveena Chandran]** and submitted that as the account was closed already and the payment of the cheque was stopped, no offence is committed by him. On the other hand, the learned counsel for complainant company placed reliance on the case reported as **AIR 1999 SUPREME COURT 1952 [NEPC Micon Ltd. and Ors. Vs. Magma Leasing Ltd.]**. In this case, the Apex Court has observed that when the cheque is returned with bank endorsement "account closed", the offence under section 138 of N.I. Act is made out. This Court is avoiding to discuss the facts of the present case and say something as to whether the offence under section 138 of N.I. Act is committed.

11. The aforesaid circumstances show that the accused is trying to take all kinds of defences and there is record of aforesaid nature. There are some provisions with regard to the bank documents and also the documents like promissory note, cheque in N.I. Act. The Trial Court will definitely consider all these provisions. The accused is expected to create some probability and he can create such probability in any way. The aforesaid conduct of the accused shows that he is trying only to protract the decision of the matter. Due to the conduct of the accused, the case filed in the year 2008 could not be decided by the learned J.M.F.C. This Court sees no reason to interfere in the order made by the learned J.M.F.C. of refusing to send the record to hand writing expert.

12. In the result, the application stands dismissed.

13. The learned counsel for applicant requested for granting stay to the proceeding for some time as he wants to challenge the order. In view of the aforesaid circumstances, this Court has refused such stay also.

[T.V. NALAWADE, J.]

ssc/