

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1364 of 2014

Bhausahab S/o. Mahadevrao Hawale
Age – 45 Years, Occu.: Agriculture
and Tailoring
R/o. Pothra, Tq. & Dist. Beed.

... APPLICANT.
(Ori. Complainant)

VERSUS

Ramesh S/o. Fakir Dodake
Aged: major, Occu. Service,
R/o. M.I.T. High School,
Satara Road, Beed Bypass Road,
Aurangabad, Tq. & Dist. Aurangabad.

... NON -APPLICANT.
(Ori. Accused)

Mr. S.S. Choudhary, Advocate for Applicant
Mr. S.S. Kulkanri, Advocate for Respondent.

CORAM : P.R. Bora, J.

RESERVED ON : 02nd March, 2015
PRONOUNCED ON : 05th March, 2015

PER COURT:

1) The original complainant in S.C.C. No. 2631/2010 filed in the Court of Judicial Magistrate, First Class, Beed has filed the present application seeking leave to appeal against the judgment and order passed in the said case by J.M.F.C. Beed on 07th January, 2014, whereby he has dismissed the said complaint.

2) The applicant had filed the aforesaid complaint against the Respondent herein under section 138 of Negotiable

Instruments Act. It was the contention of the applicant that, he had paid a sum of Rs.5,00,000/- to the Respondent since he was in dire need of the said amount at the relevant time and had promised him to repay the said amount within 3-4 months and had therefore handed over a cheque of Rs.5,00,000/- also in favour of the complainant. It is the further case of the complainant that the said cheque stood dishonoured on the ground that payment was stopped of the said cheque by the drawer. The complainant, therefore, issued statutory notice to the Respondent and demanded the amount of the cheque from him however, the Respondent did not pay the amount of the cheque within the stipulated period, on the contrary, sent a false reply to the said notice. Complainant was therefore constrain to file a complaint against him under section 138 of the Negotiable Instruments Act. Complainant examined himself before the learned Magistrate in order to substantiate the contentions raised in the complaint and to prove the offence against the Respondent. He had also filed the relevant documents on record. The Respondent had denied the charge against him. He also entered into witness box and examined one witness in his defence. Respondent also filed certain documents on record. The learned Magistrate after having considered the evidence brought before him, dismissed the complaint and acquitted the accused before him i.e. Present Respondent.

3) Aggrieved by the said decision, the applicant has approached this Court by filing the present application seeking leave to appeal against the said judgment.

4) Shri Choudhary, learned counsel appearing for the applicant taking me through the evidence on record, oral as well as documentary, submitted that, the Trial Court has failed in properly appreciating the evidence brought on record by the complainant/applicant. The learned counsel further submitted that, only on the ground that, the applicant did not file on record any documentary evidence as to where from he brought the amount of Rs.5,00,000/-. The Trial Court has recorded the conclusion that the entire transaction appears to be suspicious. The learned counsel further submitted that the conclusion recorded by the trial Court as about the difference in ink of the contents written on the cheque is also erroneous and without there being any evidence in that regard. The learned counsel further submitted that, though the Trial Court has, recorded a finding that the accused had misused the blank cheque, has not discussed the evidence on the point which according to the learned counsel cannot support the case of the accused. The learned counsel submitted that, the learned Magistrate has failed in appreciating evidence on record and the contentions of the original complainant. The learned counsel therefore prayed for allowing the application and permit the applicant to file an appeal against

the impugned Judgment.

5) Shri Kulkarni learned counsel appearing for the Respondent has strongly opposed for granting any such leave. The learned counsel also took me through the entire oral and documentary evidence in order to convince me that the Trial Court has rightly dismissed the complaint and has rightly acquitted the Respondent herein. The learned counsel brought to my notice that, it was never the case of the complainant that he had borrowed an amount of Rs.1,50,000/- from the relative namely Hanumant Naikwade. The learned counsel brought to my notice that, neither in the complaint, nor in the verification submitted and thereafter nor in the examination in chief the aforesaid fact was deposed by the complainant revealing that an amount of Rs.1,50,000/- was borrowed by him from said Hanumant Naikwade and an amount of Rs.3,50,000/- was withdrawn by him from his account in Hyderabad Bank. The learned counsel further brought to my notice that, the complainant did not examine said Hanumant Naikwade though the said fact stated by the complainant was disputed and denied by the Respondent in the cross examination of the complainant. The learned counsel further submitted that, the complainant also did not produce any evidence to show that a sum of Rs.3,50,000/- was withdrawn by him from his account in Hyderabad Bank as stated by him in his cross examination. The learned counsel submitted that, thus the

complainant had failed to prove the source of the amount of Rs. 5,00,000/- allegedly paid by him to the accused respondent. The learned counsel submitted that the trial Court has therefore, rightly dismissed the complaint and has acquitted the accused. The learned counsel, brought to my notice several other aspects also from record, more particularly the different cheque numbers which have come on record in relation to the transaction in question. The learned counsel also brought to my notice the cheque written memos wherein also the cheque number is different that written in the complaint. The learned counsel further invited my attention to the other documentary evidence brought on record by him to substantiate his defence that in fact, no transaction had occurred in between the respondent and the original complainant and the respondent had never borrowed any amount from the complainant and had never issued any cheque in favour of the complainant.

6) On careful consideration of the submissions made on behalf of respective counsel and on perusal of the impugned Judgment and oral and documentary evidence on record, the trial Court allegedly does not seem to have properly appreciated the evidence brought before it and the contentions urged by the respective parties. After having gone through the evidence on record, it appears that the cheque number which is appearing on the cheque written memo issued by the Beed District Central

Cooperative Bank Limited, Chousala branch, wherein, the number of the cheque in question tendered by the complainant for its encashment is shown the cheque number as 690283 whereas, the original cheque which is filed on record is of some different number and it shows the number on it as 690203. However, this aspect has been totally ignored by the trial Court. Secondly, the finding recorded by the Trial Court that the contents of the cheque in question are recorded in different inks also prima facie, appears to be unsustainable. There are more such discrepancies apparent from the record which have not been taken into account by the learned Magistrate. In the circumstances, leave needs to be granted to the applicant to agitate before the appellate forum. Needless to state that the respondent would obviously get the equal opportunity to rebut the contentions which may be raised on behalf of the applicant-appellant. I am, therefore, inclined to allow the present application.

7) For the reasons stated above, leave is granted. Application is allowed. The Application be converted into Appeal.

**P.R. Bora,
Judge**