IN THE HIGH COURT OF JUDICATURE OF BOMBAY BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1519 OF 2015

Satish s/o Mahavirprasad Mishra,
Age: 52 years, Occ. Agril.
r/o. Lakhamapur, Tq. Mahur,
Dist. Nanded.
...**PETITIONER**

VERSUS

1. Sachin s/o Subhash Chadawar,
Age : 42 years, Occu. Business & Plotting
Business, r/o Rajendranagar, Kinwat,
Tq.Kinwat, Dist. Nanded.

2. The State of Maharashtra.
...**RESPONDENTS**

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Mr. Sandip Swami, Advocate, h/f Mr. V.D.Gunale, Advocate for petitioner.
Mr. S.K.Kadam, APP for respondent State.

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CORAM: P.R.BORA, J.

DATE : December 2nd, 2015

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PER COURT:

1. The applicant has filed the present application invoking the provisions under Section 378(4) of the Code of Criminal Procedure, to file an appeal against the judgment and order dated 29.1.2015, passed by the learned Judicial Magistrate, First Class, Kinwat, in S.C.C. No.466/2008 whereby the learned Magistrate has acquitted the accused therein of the

offense punishable under Section 138 of the Negotiable Instruments Act, 1881.

2. Heard the learned Counsel appearing for the applicant and Shri S.K.Kadam, learned A.P.P. appearing for respondent no.2 State. Perused the impugned judgment. The learned Magistrate has recorded a finding that the complainant has failed in proving that the cheque in question was dishonoured due to insufficiency of funds in the account maintained by the accused and has consequently recorded a finding that, in such circumstances, no offense can be said to have been made out against the accused under Section 138 of the Negotiable Instruments Act, 1881.

3. The record shows that the cheque in question was returned unencashed by the Bhagyalaxmi Mahila Sahakari Bank Ltd., Nanded, stating the reason that `the cheque is out of date'. The learned Counsel appearing for the applicant submitted that the subject cheque dated 6.10.2007, was submitted by the applicant in his account in the State Bank of India, Mahur branch, on 28.3.2008. The learned Counsel further submitted that the State Bank of India, Mahur branch, returned the said cheque to the applicant on 5.5.2008 with the cheque return memo of the Bhagyalaxmi Mahila Sahakari Bank Ltd., Nanded. The learned Counsel submitted that the cheque dated 6.10.2007 was presented within the period of six months and, in such circumstances, it ought not to have been dishonoured for the reason that it was out of date cheque.

At the outset, it is to be stated that the submission so made by the learned Counsel for the applicant is totally irrelevant. Even if the contention of the applicant is accepted that the cheque so submitted for collection by the applicant was submitted within the period of validity, and further that the Bank has committed an error in returning the same unpaid for a wrong reason that it was out of date, the fact remains that the subject cheque was not dishonoured for insufficient funds in the account of the accused on which was it was drawn. From the language of Section 138 of Negotiable Instruments Act, it is clear that only if the cheque is dishonoured for want of sufficient funds or the like reason, the offense under Section 138 can be said to have been committed. If the cheque is dishonoured for any other reason like in the present case that it is not presented within the period of its validity, the drawer of the cheque cannot be held guilty under Section 138 of the Negotiable Instruments Act, 1881.

4. As stated earlier, if it is the case of the applicant that though he had tendered the cheque for collection within the period of its validity, the Bank has returned the same unencashed stating a wrong reason that it was an out of date cheque, the applicant must have raised the dispute against the Bank for returning the cheque unpaid for wrong reasons, and not against respondent no.1 herein; that too, under Section 138 of the Negotiable Instruments Act. Throughout, it is not the case of the applicant that the subject cheque is returned by the Bank unpaid, either because of the amount of money standing to the credit of the drawer's account was insufficient to honour the cheque, or that it exceeds the amount arranged to be paid from that account, or that payment of the said cheque was stopped by the drawer, or that the concerned account on which the subject cheque was drawn was closed by the drawer, or any other like reason for which the blame can be attributed

on the part of the drawer of the cheque. In the circumstances, even if the contentions of the applicant made in his complaint filed before the trial Court are accepted as it is, no offense can be said to have been committed by the accused i.e. respondent no.1 in the present application. As such, it does not appear to me that the trial Court has committed any error in acquitting the accused. From the evidence on record, it further appears to me that no other view than the one taken by the learned Magistrate can be taken in the present matter.

5. In the circumstances, grant of leave to file an appeal would be an exercise in futility. The application for leave to file appeal is rejected.

(P.R.BORA)
JUDGE

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AGP/1519-15crapln