IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1605 OF 2015

Kailas Gokulshet Kharote
age : 50 years, Occu.: Business,
R/o Gangapur Road, Vaijapur,
Tq. Vaijapur, Dist. Aurangabad .. APPLICANT
(Ori. Complainant)

VERSUS

Suresh Vishwanath Kumawat
Age : 47 years, Occ.: Service,
R/o Rajesh Medical, Vaijapur,
Tq. Vaijapur, Dist. Aurangabad .. RESPONDENT
(Ori. Accused)

Smt. Sangita Dhumal, Advocate holding for Mr. M.G. Deokate, Advocate for the applicant
Mr. L.M. Kulkarni, Advocate for the respondent

CORAM : M.T. JOSHI, J.
DATE : 10/12/2015

ORAL ORDER :

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 present applicant, who was the original complainant wants to prefer an appeal and, therefore, the present application for leave to file appeal is filed.

3. The applicant/complainant's case is that as the respondent was in financial difficulty, he obtained hand-loan of Rs.3,25,000/- from the complainant. As the respondent failed to repay the said loan within the stipulated period, he handed over the cheque in question dated 03/04/2010. The said cheque, however, was dis-honoured by the banker of the respondent. Therefore, after taking due precaution of sending legal notice to the respondent and non-receipt of the amount within time, the complaint came to be filed.

4. The respondent's case was that he had merely obtained a loan of Rs.50,000/- and as the security, the complainant has obtained the blank cheque containing only the signature of the respondent. Though, the amount is repaid, the cheque was not returned and a false case is slapped by misusing the cheque.

5. Before the learned Judicial Magistrate First Class, Aurangabad, in order to rebut the presumption that has arisen due to passing of the cheque, the

respondent, inter-alia, relied over the facts that during the same period of passing of the cheque, in-fact, the present applicant-complainant had obtained loan on two occasions from the bank; one for Rs.1,00,000/- and another for Rs.2,50,000/-.

. It is further an admitted fact that the applicant-complainant has not filed any income-tax return on record to show his financial capacity. The admitted facts were that only the signature over the cheque was in the hand-writing of the respondent.

6. Considering all these facts on record, the learned Judicial Magistrate First Class has observed that the respondent has rebutted the presumption.

7. Upon hearing both sides, in my view, the facts on record clearly establish that during the relevant period, the applicant has, in-fact, borrowed an amount of Rs.3,50,000/- with interest from various banks. It was therefore highly improbable that he would have given an amount of Rs.3,25,000/- to the present respondent without any interest. Further, there was no

contemporaneous document to show that any hand-loan was given. The financial capacity of the applicant was also not proved before the Court.

8. The learned Judicial Magistrate First Class relied on the ratio in the cases of ***"Sanjay Mishra Vs. K.K." [2009 ALL MR (Cri.) 1080], "Vijaya Vs. Sataywan" [2014 ALL MR Cri. 717]*** and ***"D'Souza Vs. Oscar D'Souza and anr." [2008(0) ALL MR (Cri.) 3321].***

9. On the other hand, learned counsel for the applicant relies before me on the ratio in the case of "***Rangappa V. Mohan" AIR 2010 S.C. 1898,*** wherein it is held that once signature on the cheque is admitted, the presumption as is available under section 139 of the Negotiable Instruments Act would come into picture and the accused will have to show by a probable defence that the presumption is rebutted.

10. There is no quarrel regarding the principle of law, as is enunciated in the case of "***Rangappa V. Mohan***" (cited supra), but the issue is, as to whether on facts,

the probable defence is taken which would rebut the presumption.

. The admitted transactions of securing loan on two occasions by the complainant from various banks with interest coupled with the fact that no oral evidence regarding the financial capacity was placed by the applicant on record, in my view, has rebutted the presumption.

11. In the circumstances, leave to file appeal is hereby refused. Application is accordingly dismissed.

[M.T. JOSHI]
JUDGE

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