

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2217 OF 2012

Pradeep s/o. Hanumantrao Deshmukh

Age 51 years., occ. Agri.,
r/o. Kallamb, Tq. Kallamb,
Dist. Osmanabad

..Applicant

Versus

1] The State of Maharashtra

2] Shahuraj s/o. Khanderao
Khose, Age 53 years,
occ. Agri. and Contractor,
Chairman of Shramajivi Majoor
Sahakari, Sanstha Ltd.,
Lohata (W), Tq. Kallamb,
Dist. Osmanabad

3] Balasaheb s/o. Anantrao Shinde,
Age 35 years, Occu. Agri. And
Contractor, Secretary Sharamjivi
Majoor Sahakari Sanstha Ltd.,
Lohata (W), Tq. Kallamb,
Dist. Osmanabad

..Respondents

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Mr.Prashant Deshmukh, advocate for applicant

Mr.S.R.Palnitkar, AGP for respondent no.1 – state

Mr.V.D.Salunke, advocate for respondent nos.2 and 3

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CORAM : M.T. JOSHI, J.

JUDGMENT RESERVED ON : APRIL 17, 2015

JUDGMENT PRONOUNCED ON : APRIL 23, 2015

JUDGMENT :

Aggrieved by recording of acquittal of the respondent nos.2 and 3 from the offence punishable under Section 138 of the Negotiable Instruments Act, present application for leave to file the appeal is filed by the original complainant.

2] Heard both sides at length.

3] Permission to file written notes of arguments was granted and accordingly, the applicant / complainant has filed the written notes of arguments.

4] The complaint, in short, is as under :-

. Respondent no.2 is the Chairman and respondent no.3 is the Secretary of one Labour Co-operative

Society, named and styled as 'Shramajivi Majoor Sahakari Sanstha Ltd.', Lohata (West). The said society is in the construction business. Therefore, the applicant had supplied road metal to the said respondents between January, 2003 and July, 2003. The total charges for the same was Rs.1,50,000/-. The respondents had promised to pay the said amount before January, 2004 and accordingly, on 5th February, 2004, they issued a cheque for Rs.1,50,000/-, as detailed in the complaint. The said cheque was presented to the bank on 19th February, 2004. However, it was dishonoured due to instruction of stopping of the payment given by the respondents. Therefore, upon return of the cheque with memo, a demand notice was issued by the applicant/complainant to the respondents/accused on 27th February, 2004. The said notice was served, but no compliance was made by the respondents/accused and hence, the complaint came to be filed.

5] Before the learned Judicial Magistrate F.C., the respondents/accused submitted that on 23rd January, 2004, they had already paid an amount of Rs.2,18,000/- to the complainant by way of cheque. However, one of the blank cheques, which were issued by them to the complainant as security, was misused by the complainant.

6] Learned Judicial Magistrate F.C., upon recording the evidence, has concluded that there was no legal enforceable liability and hence, the complaint came to be dismissed. Hence, the present application for leave to file the appeal is preferred by the applicant/complainant.

7] Mr.Deshmukh, learned counsel for the applicant/complainant, vehemently submitted that issuance of the cheque is an admitted fact, therefore, presumption as available under Section

139 of the Negotiable Instruments Act, has arisen that the said cheque was issued towards the legally enforceable liability. There is no documentary evidence on record to show that respondent nos.2 and 3 had issued any blank cheque to the applicant. Therefore, according to him, learned Judicial Magistrate F.C. has erred in law in holding that there is no legally enforceable liability.

8] On the other hand, learned counsel for respondent nos.2 and 3/accused has supported the reasoning of the learned Judicial Magistrate F.C.

9] Upon hearing both sides, in my view, learned Judicial Magistrate First Class has taken a reasonable and probable view of the matter. According to the applicant/complainant, an amount of Rs.1,50,000/- was due and for that purpose, the very same cheque was issued by the respondents on 5th February, 2004. According to him, the transaction of

supply of road metal was between January 2003 and July 2003.

10] Before learned Judicial Magistrate F.C., the respondents examined one Ramesh Kale, Branch Manager of Zilla Madhyawarti Sahakari Bank, Branch Kallam, who had brought the statement of accounts of the said bank at exhibit-82. It would show that, on 23rd January, 2004, the cheque bearing no.4752 issued in the name of complainant by the respondents for Rs.2,18,000/-, was already en-cashed by the complainant.

11] Upon considering the material on record, learned Judicial Magistrate F.C. observed that when, on 23rd January, 2004, an amount of Rs.2,18,000/- was paid by the respondents/accused to the applicant/complainant, there was no question of any further liability on the part of the respondents to pay an amount of Rs.1,50,000/- to the

applicant/complainant. In my view, no fault can be found with the said observations made by the learned Judicial Magistrate F.C.

12] In the circumstances, grant of leave to file an appeal and thereafter, hearing of the appeal, would be an exercise in futility.

13] In the result, the following order :-

. The application for grant of leave to file the appeal, is hereby rejected with no order as to costs.

[M.T. JOSHI, J.]