IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION [APPLN] NO.1197 OF 2011

Shri Tatyasaheb Kore Varana Sahakari
Sakhar Karkhana Ltd. ..Applicant
Versus
Shri Ashok Rangrao Kotulkar
and another. ..Respondents

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Mr. Sanjeev P. Kadam, Advocate for the Applicant.
Mrs. Anamika Malhotra, APP, for the Respondent-State.
Mr. Drupad S. Patil, Advocate for Respondent No.1.

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CORAM : A. R. JOSHI, J.

DATE : 3rd JULY, 2015

P.C.

1. Heard learned Counsel for the applicant / original complainant. Also heard learned Counsel for the respondent No.1 / acquitted accused. This is an application for leave to file appeal challenging the acquittal of the respondent in the matter of offence punishable under Section 138 of Negotiable Instruments Act.

2. The impugned judgment and order was passed on 12.8.2011 by J.M.F.C. Panahala, District–Kolhapur thereby acquitting the present respondent No.1 for the offence punishable under Section 138 of Negotiable Instruments Act.

3. During the arguments, learned Counsel for the applicant sugar factory brought attention of this Court towards the tripartite agreement entered into between the bank and the creditor, the present respondent as the borrower and the present applicant Sugar Karkhana as the guarantor. Without going much into the details of the terms and conditions of the said agreement which was entered on 3.10.2005, suffice it to say that there was an understanding arrived at amongst the three parties that the present respondent will be given a loan of Rs.1,50,000/- for transporting and harvesting of the sugarcane upto the factory premises of the present applicant. Thereafter the respondent has to raise bills for his such work done for the sugar factory and then out of the said bills, part of the amount is to be given to the respondent and the remaining amount to be given to the bank towards satisfaction of the loan granted in favour of the respondent. However it is pertinent to note that there is no such percentage as to how much amount from the bill is to be paid to the respondent and how much percentage of the bill is to be given to the bank towards satisfaction of the loan. However it is a factual position that not a single day work of transportation was done by the present respondent and he

did not raise any bill against the sugar factory. As such, apparently there was nothing under the tripartite agreement that the sugar factory (present applicant) to pay any amount to the bank in view of the tripartite agreement. Of course this need not be construed that the bank was not entitled to get back the amount of loan from the respondent and also from the guarantor i.e. present applicant, in case, said loan amount has already been disbursed to the respondent.

4. Also during the arguments it is submitted on behalf of the applicant that during pendency of said tripartite agreement the present respondent had given a cheque on 7.11.2005 allegedly towards the repayment of the loan which was advanced and disbursed to the respondent by the concerned bank. Said loan is for Rs.1,50,000/-. By pointing it out, it is argued on behalf of the applicant that the receipt of the advance from the bank by the present respondent has not been disputed and as such when under the agreement it was the responsibility of the present applicant sugar factory to repay the outstanding loan to the bank, being a guarantor, the amount under the said cheque was in fact to be received by the present applicant for and on

behalf of the bank towards the repayment of the loan amount to the respondent.

5. Counter to these arguments, the learned Counsel for the respondent stated that there was no legally enforceable debt or liability for the present respondent to pay any amount to the sugar factory though there might be a responsibility of the present respondent to repay the loan back to the bank. However this is the transaction of loan between the bank and the respondent. It is also argued on behalf of the respondent that the trial Court had rightly held that there was no legally enforceable liability inasmuch as there was nothing brought before the trial Court that in fact the amount of Rs.1,50,000/- which was the loan amount, has been repaid back to the bank allegedly for and on behalf of the present respondent. The trial Court came to the conclusion that there was no legally enforceable liability and as such apparently the cheque for Rs.1,50,000/- was given in favour of the sugar factory (present applicant), there was nothing on record to show that any such amount has earlier been deposited with the concerned bank towards the satisfaction of the loan apparently taken by the

respondent.

6. On carefully considering the rival arguments and after going through the record and reasoning given by the trial Court, it must be said that the view taken by the trial Court cannot be considered as illegal and erroneous, mainly in view of the factual position that even in the complaint under Section 138 of Negotiable Instruments Act before the trial Court and also in the affidavit in lieu of the verification of the complaint, there is no mention at all that the amount of Rs.1,50,000/- has been reimbursed back to the bank to satisfy the loan taken by the respondent. Even before the trial Court, no official was examined in order to establish that the loan amount has already been repaid back to the bank and as such the present applicant is now within his rights to recover that amount and that also under the cheque which was given and subsequently dishonored. In view of this position, this is not a case in which the leave to file appeal can be granted to the present applicant and the same is accordingly dismissed and disposed of.

(A. R. JOSHI, J.)

Deshmane (PS)