IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICAITON NO.18 OF 2002

M/s.Valdevi Trading Co. Pvt. Ltd.
A company registered under Companies Act,
1956 having registered office at A-8,
Vijaylaxmi Chambers, Behind Anuradha Talkies,
Nashik Road, Nashik. ...Applicant.

vs.

1. Ravindra Keruji Landge,
   Age Major, Occ. Businerss,
   R/o. Behind Bharat Math,
   Subhash Road, Nashik Road,
   Nashik.

2. State of Maharashtra,
   (Through JMFC Nashik Road Court) ...Respondents.

Mr. M.V. Limaye for the Applicant.
Mrs. A.A.Mane, APP. for Respondent No.2.

CORAM : C.V. BHADANG, J.
DATE : APRIL 27, 2015.

ORAL JUDGMENT :

Heard Shri. Limaye, the learned counsel for the petitioner and Mrs. A. A. Mane, APP. appearing for the State. None appears for the 1st respondent.

2) The applicant M/s. Valdevi Trading Company Private Limited is the original complainant. According to the applicant, it is dealing in the business of lending of loan, on interest to the extent of 24% per annum. The 1st respondent had obtained a loan from the applicant and towards the repayment of the same had issued a cheque dated 15 December 1997 for Rs.13268/- which was drawn on Janlaxmi Co-op. Bank Ltd. Deolali. The petitioner deposited the cheque in its account-with UCI Bank Nashik on 18 December 1997 but it was dishonored. Hence, the petitioner issued a notice dated 30 December 1997 which according to the petitioner was returned as “not claimed” on 16 January 1998. In such circumstances, the petitioner filed complaint under Section 138 of the Negotiable Instruments Act, being Summary Criminal Case No. 336 of 1998 on the file of the learned J.MFC. Nashik Road, Nashik. At the trial on behalf of the applicant, one Ramesh D. Kakad (PW.1) and Kishor V. Rajwade (P.W.2) were examined. The applicant produced certain documents including subject

cheque (Exh.29) and the notice. The applicant also produced its registration certificate at Exh.28. The learned Magistrate by a judgment and order dated 9 August 2001 convicted the 1st respondent for the offence punishable under Section 138 of the Negotiable Instruments Act and he was sentenced to suffer R.I. for one year and to pay a fine of Rs.2000 in default to suffer further R.I. for 3 months. The 1st respondent was also directed to pay Rs.5000/- towards the compensation to the petitioner within two months.

3) Feeling aggrieved, the 1st respondent filed Criminal Appeal No.62 of 2001 before the learned Additional Sessions Judge at Nashik. By a Judgment and order dated 10 October 2001 the Criminal Appeal was allowed and the first respondent has been acquitted. The present revision application has been filed by the complainant challenging the said acquittal.

4) It is submitted on behalf of the applicant that the finding recorded by the learned Magistrate on the issue of cheque

having been issued towards the discharge of legally enforceable liability or debt could not have been interfered with. It is submitted that there is a presumption available under Section 139 of the Negotiable Instruments Act in which once the accused admits the signature on the cheque, it shall be presumed unless otherwise proved that the cheque was issued in discharge of legally enforceable debt or liability. The learned counsel submitted that the 1st respondent has not led any evidence and even otherwise has failed to rebut the said presumption. It is next submitted that the finding recorded by the learned Sessions Judge on the point of service of the notice is also invalid inasmuch as the learned Magistrate in Para 8 of the Judgment has properly considered the evidence on record and found that the address of the first respondent mentioned on the office copy of the notice Exh.31 as well as envelope Exh.30 is the same and summons in the case was also served on the 1st respondent on the same address. He therefore, submitted that the learned Sessions Judge erred in holding that clear 15 days notice was not served on the 1st respondent.. Even so far as the aspect of non production of licence of money lending is concerned, it is submitted that once the 1st respondent has admitted that he had availed of the loan he cannot now turn around and question the authority of the applicant to do money lending business. It is submitted that in such circumstances, the impugned Judgment passed by the learned Sessions Judge acquitting the 1st respondent may be set aside and the Judgment of the learned Magistrate be restored.

5) I have considered the rival submissions and contentions raised. I find that the impugned judgment passed by the learned Sessions Judge does not need any interference. I find that the complaint filed by the applicant has to fail only on the ground of failure of the applicant to produce valid licence under Section 45IA(a) of the Reserve Bank of India Act 1934. It trite that in order to attract the penal provisions under Section 138 of the Negotiable Instruments Act, the basic requirement which has to be satisfied is that the cheque has to be shown to be issued against the discharge of legally enforceable debt or liability. Undoubtedly, there is a presumption available to the complainant under Section

139 of the Negotiable Instruments Act. However, that is a rebuttable presumption. The accused can rebut that presumption on the basis of the allegations in the complaint and the evidence led by the complainant, his witnesses. It is not always necessary for the accused to lead independent evidence for the same. Coming to the present case, the applicant has made out a case in the complaint, that it is in the business of money lending. In such circumstances, on its own saying the subject transaction was one of money lending and in that view of the matter it was obligatory on the part of the applicant to produce valid certificate/licence to show that it was authorized to do such a business. The learned Additional Sessions Judge has noticed that the Certificate of Registration (Exh.28) which is produced on record, is the certificate of registration under the Companies Act and it does not show that the applicant was authorized lender to do business of banking and financing. In such circumstances,I find that the learned Sessions Judge has rightly come to the conclusion that the applicant had failed to establish that cheque was issued against the discharge of legally enforceable debt or liability. In the absence

of any perversity, no interference is called for in the impugned order. In the result, revision fails and is accordingly dismissed.

(C.V. BHADANG, J.)