IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 338 OF 2001

M/s. Sapana Polyweave Pvt. Ltd.	**}**
(Through Mr. Rameshwar	}
Chaurasia Personal Executive)	}
Office At 158, CST Road,	}
Kalina, Santacruz (E),	}..Applicant
Mumbai – 98	}(Org. Complainant)
V/s.	
1. B.S. Kadam	**}**
The Director of M/s. Amogh	}
Distributor P. Ltd.	}
2. M/s. Amogh Distributors	**}**
Pvt. Ltd.	}
Office At 8, Patel Complex,	}
Opp. Johnson and Johnson Ltd.,	}
Safed Pool, K.A. Road,	}
Mumbai – 400 072.	}..Respondents
3. The State of Maharashtra	**}**(Org. Accused)

Mr. S.A. Oka i/by M/s. Mahesh Menon & Co. for the applicant.
Mr. V.S. Kapse a/w Mr. Siddharth Ingle & Mr. Yogesh B. Pawaskar, for the respondent no. 1.
Mrs. A.A. Mane, APP for respondent no.2-State.

CORAM : C.V. BHADANG, J.

DATE : 28TH APRIL 2015.

ORAL JUDGEMENT

1. By this Revision application the original complainant takes exception to the judgment and order dated 23rd August

2001 passed by the learned Additional Chief Metropolitan Magistrate, Bandra, Mumbai in Criminal Case No. 689/S/97. By the impugned judgment the complaint filed by the applicant under section 138 of the Negotiable Instruments Act, 1881 ("NI Act" for short) against 1st and 2nd respondent has been dismissed and they have been acquitted of the said offence.

2. The brief facts are that the applicant is a company incorporated under the provisions of the Companies Act 1956 and is carrying on business of sale of polythin mats etc. The 2nd respondent is the distributor of the applicant company of which the 1st respondent is the proprietor. It is contended that inorder to promote the sale of the product of the applicant, a credit of 7 to 8 days was given to the 2nd respondent in respect of the products sold. It was the practice of the respondent to give blank cheques to the applicant against goods sold by the applicant to these respondents.

3. The case of the applicant was that it had supplied goods to the 1st and 2nd respondents on 7th January 1996, 16th

January 1996, 18th January 1996, 04th February 1996 and 11th June 1996 under the invoices (Exh. P-2 to P-6) collectively valued at Rs.4,97,438.60 ps. The original accused had issued four cheques dated 1st March 1996 (Exh.P-7) against the supply of the said goods totaling to an amount of Rs.3,01,431/-. When the applicant presented the said cheque for encashment, they were dishonoured on account of payment being stopped by the drawer. This was so informed to the applicant vide bank memo dated 6th March 1996. Thereafter, the applicant issued statutory notice vide (Exh.P-9) dated 12th March 1996 and as the respondents failed to comply with the same, the applicant filed a complaint under section 138 of the NI Act before the Metropolitan Magistrate Bandra, Mumbai.

4. At the trial, the applicant examined three witnesses namely Rameshwar Shivnarayan Chourasia (PW-1), Suresh Dhlaji Shinde (PW-2) and Nandkumar Raghnath Brid (PW-3). The accused examined Shri. Shyam Janimal Sahajwala (DW No.1). The learned Magistrate on consideration of the rival circumstances and the evidence on record found that the

applicant had failed to establish his case. It was found that the cheques were issued against any legally enforceable debt or other liability. In that view of the matter 1^{st} and 2^{nd} respondent came to be acquitted.

5. I have heard Shri. Oka learned counsel for the applicant, Shri.Kapse for respondent no. 1 and 2 and Mr. Mane learned APP for the respondent no. 3-State.

6. It is submitted on behalf of the applicant that Summary Suit No. 3041 of 1998 was filed by the applicant in respect of the same transaction in which the respondents had deposited an amount of Rs. 1,50,000/-. It is thus submitted that the respondents are not disputing the fact that the goods were supplied and they owed the amount towards its consideration. It is next submitted that the Learned Trial Court was in error in appreciating the evidence led on behalf of the applicant and in particular that of Rameshwar Chourasia (PW-1). The learned counsel would submit that the evidence has to be read as a whole and the learned Magistrate was not

right in picking some part thereof and placing reliance on the same. The learned counsel had invited my attention to the part of evidence in which Rameshwar Chourasia (PW-1) has stated that goods were sent on 07th January 1996 through the transporters, namely Vishwas Road Lines at Sakinaka, Mumbai, and the goods were delivered, of which the TOR was produced at Exh.-X. It is submitted that the evidence of PW-1 Ramesh on the point of supply/delivery of goods has not been challenged. The learned counsel has submitted that there was positive evidence on record that the cheques were singed by the respondent No. 1 Shri. B.S. Kadam in the presence of Rameshwar Chourasia (PW-1). Thus the reliance placed by the learned Magistrate on a stray statement that the cheques were blank, was not proper. It is submitted that the letter dated 9th February 1996 by which the 1st and 2nd respondent had allegedly intimated the applicant not to present the cheques was received by the applicant on 21st March 1996 and the cheques were dishonoured prior to that i.e. of 07th March 1996. It is thus submitted that the order of the acquittal recorded by the learned Magistrate is on account of gross miss-appreciation of the evidence on record which would need interference by this court.

7. The learned counsel for the 1st and 2nd respondent has supported the impugned judgment. It is submitted that Rameshwar Chourasia (PW-1) has clearly admitted that blank cheques were obtained and there is no acceptable material on record as to when and under what circumstances the cheques were filled in. It is submitted that it cannot be accepted that the 1st and 2nd respondent had filled in the cheques subsequently. The learned counsel has submitted that PW-1 Rameshwar Chourasia (PW-1) has in clear terms admitted that the subject cheques do not relate to the transactions reflected in invoices (Exh. P1 to P6) and in that view of the matter no exception can be taken to the finding of acquittal recorded by the learned Magistrate.

8. I have considered the rival circumstances and the submissions made. At the outset if needs to be mentioned that against an order of acquittal an appeal lies under section

378(4) of the Criminal Procedure Code. It is submitted by the learned counsel for the applicant that the Revision Application pertains to the year 2001 and at this stage this court may not refuse to entertain the same on the technical ground of remedy of an appeal being available. It is submitted that this Revision Application may be treated as an appeal.

9. Undoubtedly under section 378(4) of the Criminal Procedure Code an appeal lies to this court at the instance of the complainant against an order of acquittal after obtaining leave. This Revision Application has been filed in the year 2001 and admitted long back. I find it appropriate to treat the present Revision Application as an appeal and to decide the same on merits rather than non-suiting the applicant on a technical ground.

10. The scope and ambit of the powers of the Appellate court in entertaining a challenge against the acquittal, is now well settled. A useful reference in this regard may be made to the case of **Bassapa V/s. State of Karnataka, (2014) 5 SCC**

154). The scope of interference is essentially limited. It is only when the finding recorded by the Trial Court is found to be perverse or based on complete mis-appreciation of the evidence on record that the Appellate Court is justified to step in. When two views are equally possible, the Appellate Court would not be justified in substituting its view in the place of the one taken by the learned Trial Court on the ground that it is more plausible view.

11. Turning to the present matter, the case of the complainant itself is that there was a practice of the respondents giving blank cheques to the applicant against goods sold by the applicant. Rameshwar Chourasia (PW-1) has also categorically admitted that all four cheques in the present case were blank all though he has stated that they were signed by the accused B.S. Kadam in his presence. There is nothing on record to show as to when and in what circumstances the contents of the cheque were filled in subsequently. Rameshwar Chourasis (PW-1) has also admitted that whenever goods were supplied to the accused on credit, blank cheques

were obtained. The witness has also admitted that the invoices which are produced on record (Exh. P-1 to P-6) do not relate to the subject cheques in question. If that be so, the very foundation of the complainant's case falls through. The requirement that the cheques which are dishonoured, were issued against discharge of a legally enforceable debt or liability is the gist of the offence under section 138 of the N.I. Act. In my considered view, the evidence of Rameshwar Chourasia (PW-1) that the goods were sent to the accused on 07th January 1996 and they were delivered would not take the case of the complainant any further. Inasmuch as the subject not against the goods sold vide Exh.P-1 to P-6. I find that the learned Magistrate has rightly come to the conclusion that applicant has failed to establish that the cheques were issued against discharge of a legally enforceable debt or liability. The view so taken cannot be said to be perverse or contrary to the evidence on record, so as to require interference. The view taken is a plausible view in the light of the evidence on record.

12. Thus the challenge is without any merit and it

accordingly fails. The revision application is accordingly dismissed with no order as to costs.

[C.V. BHADANG, J.]