

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION [ALP] NO.46 OF 2013

Mrs. Anuradha Nayan Shah

..Applicant

Versus

Mr. Abdul Latif Kazi @ Abdul

Mohd. Latif Ishaq Kazi and another.

..Respondents

....

Mr. Shekhar Ingawale, Advocate for the Applicant.

Mrs. Anamika Malhotra, APP, for the Respondent-State.

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CORAM : A. R. JOSHI, J.

DATE : 7th JULY, 2015

P.C.

1. Heard learned Counsel for the applicant. Though respondent No.1 was served through public notice, none present for him.

2. This is an application for leave to file appeal challenging the acquittal of respondent No.1 in the matter of offence punishable under Section 138 of Negotiable Instruments Act.

3. The case of the complainant / present applicant is that a sort of MOU was entered into between her and the owner of the flat and the present respondent being the surety for the sale of certain flat in a co-operative housing society. In lieu of that transaction, a cheque of Rs.2 Lakh was given and it was in fact

credited in the account of the present respondent. The bank statement to that effect was produced before the trial Court. There was a clause in the agreement that if the transaction could not proceed then apart from the owner of the flat, the present respondent/ the guarantor was also liable to repay back the amount. In pursuance to the said clause, according to the complainant the concerned cheque dated 31.1.2006 was given by the present respondent. It was dishonored, leading to giving of a demand notice and lodging of the complaint. Reportedly, no reply was filed to the said demand notice.

4. What weighed with the trial Court was the apparent defence by the respondent that the complaint under Section 138 of Negotiable Instruments Act was not properly filed inasmuch as the complainant filed the same in her individual capacity whereas the transaction entered by her was as and by way of Director of M/s.Mayfair Housing Private Limited. It also weighed with the trial Court that without proper authorization from the present complainant, her husband lodged the complaint as her power of attorney holder. It was the defence of the respondent that the cheque which was dishonored, was taken by the complainant by force and it was taken in blank.

However, reportedly, there was nothing brought before the trial Court as to lodging of any complaint for such allegation. Considering this factual position, in the opinion of this Court there are debatable issues as to proper lodging of the complaint and whether there was legally enforceable debt against the respondent No.1 and as such these debatable issues are required to be dealt in detail at the final adjudication of the appeal which is required to be admitted. Hence, the order :

:: O R D E R ::

- [i] Application for leave to file appeal is allowed.
- [ii] Application be treated as an appeal. Necessary amendment be carried out and appeal be numbered accordingly. Appeal is also admitted. Call for R & P.
- [iii] Process under Section 390 of Cr.P.C. be initiated against the respondent No.1 with directions to the trial Court to release the respondent No.1 on bail in the sum of Rs.500/-. Learned APP for respondent No.2 – State waives service.

(A. R. JOSHI, J.)