

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.78 OF 2015

Mrs. Bina Kishore Thakkar

...Applicant

Versus

Mrs. Alpa Rajesh Mall & Anr.

...Respondents

.....

Mr. Rajesh Singh for the Applicant.

Mr. Udayan S. Jain with Ms Grishma Lad and Ms Paridhi Vora
for Respondent No.1

Ms R.V. Newton, APP for Respondent No.2 - State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : 10th SEPTEMBER, 2015.

P. C. :

This is an application under section 378 of the Code of Criminal Procedure. The Applicant was the complainant in C.C. No.3058/SS/2013 filed before the Metropolitan Magistrate, 72nd Court.

2. The case of the Applicant-complainant is that Respondent No.1-accused had agreed to purchase office premises bearing Room Nos.401 and 402 situated on the 4th Floor in A wing of Shree Siddhi Plaza, R.R.T. Road, Mulund (west) by sale agreement dated 11th April, 2011 for total consideration of Rs.1,50,00,000/-. It was stated that the Respondent No.1-accused had paid Rs.1,00,000/- by cheque

No.924952 dated 23rd May, 2012 and an amount of Rs.59,00,000/- by cheque No.924956 dated 16th June, 2012, which were presented in the Bank and duly encashed. Respondent No.1-accused had also issued another cheque No.924957 dated 15th December, 2012 for Rs.90,00,000/- towards the payment of the balance amount, which was subsequently replaced by Cheque No.061680 dated 22nd August, 2013 for Rs.89,10,000/-. Said cheque was presented in the Bank but was returned with endorsement as “insufficient funds”. The statutory notice was issued but the same was returned unclaimed. Since Respondent No.1 - accused did not pay the cheque amount within 15 days, proceedings under section 138 of the Negotiable Instruments Act came to be initiated against Respondent No.1.

3. Respondent No.1 put his appearance and pleaded not guilty and came to be tried. Upon considering the evidence adduced by the Applicant-complainant, the learned Magistrate, by judgment dated 2nd May, 2014 dismissed the complaint and acquitted Respondent No.1-accused of the offence punishable under section 138 of the Negotiable Instruments Act. Being aggrieved by the said judgment, the Applicant-complainant has filed this application for leave to appeal against the said impugned judgment.

4. With the assistance of the learned counsel for the Applicant and the learned counsel for Respondent No.1, I have gone through the notes of evidence and documents, which form part of the record of the Trial Court. It is not in dispute that the Applicant and Respondent No.1 had entered into an agreement dated 20th June, 2012, whereby the Applicant-complainant had agreed to sale to Respondent No.1 the office premises for a total consideration of Rs.1,50,00,000/-. It is also not in dispute that the Applicant had received Rs.1,00,000/- as token amount by cheque dated 23rd May, 2012 and further a sum of Rs.59,00,000/-by cheque No.924956 dated 16th June, 2012 towards part payment of the said consideration. Dispute is regarding the cheque dated 22nd August, 2013 for Rs.89,10,000/-, which according to the complainant was issued towards the balance amount payable by Respondent No.1-accused. It is pertinent to note that though the Applicant-complainant had stated that an amount of Rs.90,00,000/- was still due, in his cross examination at para 22, he has admitted having issued the receipt at Exh.21 which reveals that in addition to the amount paid by the said two cheques he had also received Rs.41,50,000/- from Respondent No.1-accused in cash. He has also admitted that Rs.41,50,000/- was received by him towards the part

payment of the consideration in respect of the office premises No.401 and 402. He has further admitted that the said amount of Rs.41,50,000/- was received in cash towards the balance consideration in respect of the office premises No.401 and 402 and that the same was paid. This admission belies the contention that the Respondent No.1-accused was liable to pay consideration of Rs.89,10,000/-. Consequently the Respondent No.1-accused had rebutted the presumption that the cheque was issued towards the legally enforceable debt.

5. In the light of the said admissions findings arrived at by learned Magistrate cannot be said to be perverse or illegal. Hence, the application is dismissed. Leave is rejected.

(ANUJA PRABHUDESSAI, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed
Judgment /order.