

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION [ALP] NO.123 OF 2014

M/s. Choudhary Internatinal Pvt. Ltd. ..Applicant
Versus
M/s. United Shipping Services
Pvt. Ltd. and others. ..Respondents

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Mr. Ankush Bansal, Advocate for the Applicant.
Mr. A.R. Patil, APP, for the State.
Mr. Satish Upadhayay i/b. M. V. Kini & Co. for Respondent Nos.1
and 2.

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CORAM : A. R. JOSHI, J.

DATE : 3rd JULY, 2015

P.C.

1. Heard rival submissions on this application for leave to file appeal challenging the judgment and order of acquittal of the respondents in the matter of offences punishable under Sections 407 and 411 of IPC.

2. The impugned judgment and order was passed by the Metropolitan Magistrate, Court No.62, Dadar, Mumbai on 14.2.2014. Said impugned judgment and order was passed on the private complaint lodged by the present applicant for taking action against the respondents under Sections 403, 405, 406,

407, 410, 411, 415, 417, 418 and 420 read with Section 120B of IPC. In the original complaint, present respondent No.1 company was made as an accused No.1 and respondent No.2 being Managing Director of the company was made as accused No.2. Though various offences were lodged against the respondents apparently the process was issued only for the offences punishable under Sections 407 and 411 of IPC and the respondents were tried for the said offences.

3. On behalf of the complainant two witnesses were examined and present respondent No.2 / original accused No.2 examined himself. The case of the complainant in nutshell is that he had exported certain leather goods through the courier company / the present respondent company to the buyer situated at Spain. The buyer at Spain is by name M/s. Books Zapato S.L. Villena, Spain. According to the complainant, said buyer had engaged and appointed the present respondent No.1 company as its official courier and requested the complainant to dispatch the goods to Madrid. According to this arrangement the present respondent No.1 company approached the complainant vide letter 13th March, 2006 for shipment of the

goods. The complainant ascertained the authenticity of the respondent company and its working and truthfulness of the business and standing in the business line and then the transaction was continued. According to the complainant the goods were not delivered and were misappropriated by the respondent company thus leading the complainant to lodge private complaint after issuance of a notice.

4. What weighed with the trial Court was that firstly the complainant failed to establish that the respondent No.1 company was a courier and as such was responsible for the delivery of goods at the destination at Spain to the buyer and secondly the Court came to the conclusion that the offence under Section 411 has also not been established for the reasons that according to the case of the complainant himself the goods were delivered to the buyer and as such there could not have been any offence of having in possession of the stolen property.

5. During the arguments, attention of the Court is drawn towards the contents of the original complaint and specifically mentioned in para-7 that the accused / the present respondent sent email informing the complainant that delivery was made by

them to the buyer. On this, the complainant contacted his bank and enquired about the payment status. On this the company was informed that the buyer has not come for making the payment and releasing the export documents from the foreign bank and the original export documents were lying dishonored with the foreign bank. It is further mentioned in the complaint that the complainant was shocked to know that the accused have given delivery illegally without receiving the original consignee copy of Airway Bill from the buyer and without any such instructions from the complainant or the bank. Accordingly this material was taken by the trial Court as the delivery effected to the buyer at Spain but the payment was not forthcoming from the buyer. The trial Court also came to the conclusion that at the most the transaction between the present applicant / original complainant and the respondent accused would attract civil liability in case of failure of the accused to comply the directions. In any rate, the trial Court came to the conclusion that the criminal offence punishable under Section 407 and also under Section 411 of IPC was not established.

6. Considering the evidence adduced before the trial

Court by two witnesses of the complainant and evidence of the present respondent No.2, in the opinion of this Court, it cannot be said that the trial Court had committed an error and that the present application can be allowed. In other words, considering the material and the own admissions given by the complainant party and moreover the contents of the notice issued against the respondent, in the considered view of this Court this is not a case in which leave can be granted to challenge the judgment and order of acquittal and as such the present application is dismissed and accordingly disposed of.

(A. R. JOSHI, J.)

Deshmane (PS)