

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

APPLICATION FOR LEAVE TO APPEAL (PVT) NO.123 OF 2013

M/s.Fairco Exports	...	Applicant
V/s.		
Mr.Tarachand Purohit & Anr.	...	Respondents

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Mr.Digajmaan G.Mishra, Advocate for the Applicant.
Mr.S.Malik i/b.Ms.Nishtha Malik, Advocate for the Respondent No.
1.
Mrs.S.V.Gajare, APP for the Respondent/State.

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CORAM : ABHAY M. THIPSAY J.

DATED : 3RD MARCH 2015

P.C.

1. The applicant is the original complainant. He had prosecuted the respondent No.1 herein on the allegation of his having committed an offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The Metropolitan Magistrate, 58th Court, Bandra, after holding a trial, found the respondent No. 1 not guilty and hence passed an order of acquittal. The applicant, who is aggrieved by the said order of acquittal, is, by the present application, seeking leave to file an appeal therefrom.

2. I have heard Mr.Mishra, the learned counsel for the applicant in support of the application. I have also briefly heard Mr.Malik, the learned counsel for the respondent No.1.

3. With the assistance of the learned counsel, I have gone through the impugned Judgment, a copy of the complaint and other relevant annexures to the application.

4. For the sake of convenience and clarity, the applicant shall, hereinafter, be referred to as “the complainant” and the respondent No.1 as “the accused”.

5. The case of the complainant was that the accused had purchased some steel scrap from the complainant during the period from May 2007 to July 2008. The scrap material sold by the complainant to the accused during this period was said to be worth Rs.1,44,90,933/-. It was sold under different bills/invoices, the details of which are found in paragraph 4 of the complaint. According to the complainant, out of the said amount, the accused paid an amount of Rs.97,87,047/-, but the amount of Rs. 48,43,886/- remained to be paid. That on 15/04/2011, the accused issued 14 cheques to the complainant totaling Rs. 48,43,015/-. That, those cheques were dishonoured when presented, with the remark, 'Funds Insufficient'; and since in spite of a demand notice, the amount of the said cheques was not paid, the prosecution was launched.

6. The learned Magistrate did not believe the version of the complainant for a number of reasons.

7. In the first place, the Magistrate observed that there was no satisfactory evidence of the actual delivery of material by the complainant to the accused. The Magistrate also noted the defence of the accused that the cheques in question had not been issued in discharge of the liability as per the invoices listed in paragraph 4 of the complaint and that, they had been issued on 04/11/2009 in advance as a security for future transactions. The Magistrate noted that the accused had taken the same defence while replying to the demand notice.

8. The Magistrate also thought it quite improbable that the complainant should receive 14 cheques of the same date for different amounts, and that too for the transaction that had taken place in the year 2007-2008. The Magistrate also noted that the amount of the invoices and the amount of the cheques did not tally and that, there was no satisfactory explanation as to how an amount of a particular cheque was arrived at.

9. The view of the matter, as taken by the Magistrate, is certainly *a possible view*. Simply because there might be some amount outstanding from the accused to the complainant, the complainant cannot expect the Court to accept the version of the

complainant as put forth by him in spite of inherent improbabilities contained therein.

10. In any case, since the view of the matter, as taken by the Magistrate, is *a possible view*, grant of leave would be futile.

11. Leave refused.

12. The application is rejected.

(ABHAY M. THIPSAY J.)