IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No.177 of 2014

M/s.Gharge Salunkhe Associates .. Applicant
Versus
Shivaji Pandurang Sawant and anr .. Respondents

Mr.Ajay Basutkar with Mr.Vijaysinh, Advocate for the applicant.

Mr.Shivaji P. Sawant, Advocate for respondent no.1.

Mrs.M.R.Tidke, APP for the Respondent State.

CORAM : ABHAY M. THIPSAY, J.

DATED : 13th JANUARY 2015.

P.C. :

1 Heard Mr.Ajay Basutkar, learned counsel for the applicant. Heard Mr.Shivaji Sawant, learned counsel for the respondent no.1.

2 The applicant - a partnership firm - prosecuted the respondent no.1 herein on the allegation of having committed an offence punishable under section 138 of the Negotiable Instruments Act. The Judicial Magistrate First Class, Satara, after holding a trial found the respondent no.1 not guilty, and passed an order of acquittal. The applicant (hereinafter

referred to as 'the complainant') is aggrieved by the said order of acquittal, and is by the present application, seeking leave to file an appeal therefrom.

3 With the assistance of the learned counsel for the complainant and the respondent no.1 (hereinafter referred to 'accused') who appears in person, I have carefully gone through the impugned judgment. I have also gone through the application for leave.

4 The complainant's case was that the accused had agreed to purchase a flat being Flat No.G-106 in the building that was being constructed by the complainant. That, the consideration agreed was Rs.15,65,000/- which included legal, electrical charges etc. An agreement for sale was entered into, and executed between the parties in which the consideration towards the purchase price of the said flat, was mentioned. That, the complainant received an amount of Rs.12,70,000/- from the bank that had sanctioned the housing loan for the purchase of the said flat to the accused. The amount that was payable by the accused thereafter was Rs.2,95,000/-, and that towards the repayment of a part thereof, the accused had issued a cheque in the sum of Rs.1,00,000/- in favour of the complainant. That, this cheque was dishonored, and as inspite of demanding the amount of the said cheque, it was not paid, the accused was prosecuted.

5 The accused took a plea before the Magistrate that the entire amounts due and payable to the complainant towards the purchase of the said flat had been paid. In fact, he said that the amounts paid were more than the consideration agreed for the said flat as the accused also wanted to purchase one room in the adjacent flat. According to the accused, towards the purchase price of the said room, some other amount – in addition to the amount payable for Flat no.G-106 – had been paid by him to the complainant.

6 In support of his defence, the accused produced receipts showing cash payments made to the complainant by him. That, the receipts had been issued by the complainant, was not disputed before the trial court. It is not disputed before this Court also. What is disputed is that the receipts have been issued without actually receiving any amounts, and that the receipts were issued to oblige the accused who had represented that he wanted to raise the loan amount on the basis of these receipts. This contention of the complainant was not accepted by the learned Magistrate.

7 The learned counsel for the complainant submitted that the receipts do not reflect that the amounts mentioned therein were actually received by the complainant because had it been so, the amount paid by the accused would be much more than what was agreed upon. Based on this reasoning, an inference is expected to be drawn that the

payments as reflected in the receipts in question, cannot be believed to have been actually made.

8 It is difficult to agree with this contention. When the fact of issuing the receipts is not in dispute, and the claim was merely that the receipts do not represent the correct position, it was necessary for the complainant to have established this aspect of the matter by some satisfactory evidence.

9 Apart from this, it appears that a 'payment due statement' had been issued by the complainant in which the amount received by the complainant from the accused towards the Flat no.G-106 is shown as Rs.19,45,000/-.

10 Going by the receipts issued – supposedly against cash payments – the amount received by the complainant would be Rs.18,45,000/-.

11 The Magistrate observed that the complaint was that the cheque in question had been issued towards the purchase price of Flat No.G-106, which had not been paid. The Magistrate then observed that the evidence clearly indicated that the consideration agreed therefor, had already been paid. The Magistrate, therefore, concluded that the cheque in question could not have been said to have been issued in discharge of any legally enforceable debt or other

liability. Undoubtedly, some contentions have been raised on behalf of the complainant, suggesting that there was some understanding between the parties. Though this is possible, and though at the most, it can be said that there exists a doubt as to what was exactly agreed between the parties, and whether the cheque was issued in relation to some other transactions, still, <u>when the complainant had categorically stated, the cheque to have been issued for discharging a particular liability, and when that was found to be wrong, the order of acquittal as passed by the Magistrate, cannot be faulted with.</u>

12 In any case, the view of the matter as taken by the Magistrate was a possible view.

13 It is well settled that while considering the question of grant of leave, the principles on which an order of acquittal is liable to be interfered with, need to be kept in mind. In this case, grant of leave would be futile.

14 Leave refused.

15 Application is rejected.

(ABHAY M.THIPSAY, J)