IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.724 OF 2013

ARUN YASHWANT POTPHODE)...APPELLANT

V/s.

MAHENDRA CHANDRAKANT LANJEKAR)
AND ANOTHER)...RESPONDENTS

Ms.Seema R. Bithare & Ms.Jyotsna Kamble, Advocates for the Appellant.

Ms.Sushma S. Kulkarni, Advocate for Respondent No.1.

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

CORAM : ABHAY M. THIPSAY, J.

DATE : 2nd FEBRUARY, 2015.

ORAL ORDER :

1 On a complaint lodged by the appellant, respondent no.1 was prosecuted and convicted of an offence punishable under Section 138 of the Negotiable Instruments Act by the Judicial Magistrate, First Class, at Thane. Respondent no.1 appealed to the Sessions court challenging his conviction and the sentence imposed upon him. This appeal was allowed by the learned

Additional Sessions Judge, who heard the same, acquitting respondent no.1. The appellant is aggrieved by the said order of acquittal. He has, therefore, approached this court by the present appeal.

2 Initially, the appellant had filed an application for revision, but since it was pointed out that an appeal lies from the impugned order passed by the Sessions court, the revision application was, with the permission of the court, got converted into an appeal. It appears that no leave to appeal was specifically asked, but the proceedings came to be numbered as an appeal. I have, therefore, heard the appeal for admission.

3 I have heard Ms.Seema Bithare, the learned counsel for the appellant. I have heard Ms.Sushma Kulkarni, the learned counsel for respondent no.1.

For the sake of convenience and clarity, the appellant shall hereinafter be referred to as 'the complainant' and respondent no.1 as 'the accused.'

4 The case of the complainant was that, he had lent money to the accused. The complainant and the accused are related to each other as cousins. The complainant's case was specific, namely that, he paid an amount of Rs.53,000/- in cash to the accused on 6th August, 2004, and further, an amount of Rs.62,000/- on 1st September, 2004. That, the accused was supposed to repay the amount within two months, but he did not do so. When the complainant demanded the amount of loan from the accused, the accused issued cheque dated 11th October, 2007, for an amount of Rs.1,15,000/-, which got dishonoured and which resulted in the prosecution of the accused.

5 I have gone through the judgment delivered by the learned Magistrate, as also, the the impugned judgment. A copy of the judgment delivered by the Magistrate was not annexed to the application, but the same has been tendered to the court in the course of hearing.

6 While holding the accused guilty, the Magistrate emphasised the fact that the signature on the cheque had not been denied by the accused. This factor, the Magistrate considered in the light of the presumptions under Sections 118 and 139 of the Negotiable Instruments Act, and held the accused guilty. Thus, it is only on the basis, that the cheque signed by the accused existed, that the Magistrate felt satisfied that it had been issued in discharge of a legally enforceable debt, or other liability.

7 The learned Additional Sessions Judge observed that, the complainant had admitted that the accused had given a blank signed cheque. The learned Additional Sessions Judge also observed that the accused, who had examined himself as a witness for defence, had also stated that no date had been put by him on the cheque. In other words, except the signature on the cheque, no other matter thereon had been written by the accused. Infact, the complaint admitted that the cheque had been filled by him and not by the accused.

8 The question is, '*whether the doubt felt by the learned Additional Sessions Judge about the truth of the complainant's version is reasonable, proper and justified.*'

9 Much emphasis had been placed by the learned counsel for the complainant on the admission of the accused that he had signed the cheque. The contention is that, once the accused admits that he has signed the cheque, nothing else is required to be established by the complainant, in view of the presumptions contained in Sections 118 and 139 of the Negotiable Instruments Act. It is also contended on behalf of the complainant that the accused had not indicated as to *why* the cheque had been issued.

10 The last mentioned contention does not appear to be correct, as according to the accused, the cheque had been signed by him as the complainant was in need of money, and had made a request to give him some monetary help.

11 The complainant has not stated in the complaint that the cheque in question was a blank signed cheque. The complainant did not state so in his examination-in-chief also. A stand, that 'it does not matter that it was a blank cheque', is taken only after this aspect was revealed in the course of the cross-examination of the complainant. The question that arises in such a case is that, '*whether the amount that had been put in the cheque, (which is admittedly done by the complainant) was with the consent – express or implied – of the accused and as per the agreement between the accused and the payee.*' Surely, if blank signed cheque is given, one would be able to say that there was a certain understanding between the parties, but one can also say that the amount that was to be paid by the drawer to the payee, was uncertain or unascertained at that time. If it would be otherwise, there would be no necessity or question of giving a blank signed cheque, as the amount agreed upon between the parties could have been very well put on the cheque at that time itself. Therefore, when the fact, that a blank cheque was issued by the complainant came to light, it was necessary for the complainant to have shown that the amount put

by him on the cheque, was the amount which the accused was liable to pay. Now, this is sought to be done by claiming that, more than three years before, payments on two different occasions and on two different dates, in cash, were made by the complainant to the accused. There is no support to such a claim.

12 Though I do not agree with the entire reasoning of the Additional Sessions Judge, his observation that since a blank cheque had been issued by the accused and since there was nothing to show that it was filled with the consent of the accused, the accused could not be held guilty of the alleged offence, is proper.

13 The learned Magistrate had failed to grasp the significance of the fact that the cheque in question was a blank signed cheque, which was, later on, filled by the complainant, and to draw proper inference from this fact. The judgment of conviction, as recorded by the Magistrate, was rightly reversed by the learned Additional Sessions Judge, in my opinion.

14 The principle that, this court would not interfere with an order of acquittal, if the view taken by the acquitting court is a possible view, would be applicable to even an appellate order of acquittal. Though the rigour of this principle would be somewhat diluted when the order of acquittal is an appellate order and not that of a trial court, still, the principle cannot be lost sight of, and this court would be slow in interfering with even an appellate order of acquittal.

15 Since, the order of acquittal, as passed by the court of Sessions in appeal, does not appear to be suffering from any illegality or impropriety, the appeal fails.

16 The appeal is dismissed.

(ABHAY M. THIPSAY, J.)