IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.246 OF 2015

Haribansh Narayan Singh ...Applicant

Versus

The State of Maharashtra & Anr. ...Respondents

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Mr. V.C. Singh with Ms Shweta Singh for the Applicant.
Mr. J.H. Ramugade, APP for Respondent No.2-State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : 16th OCTOBER, 2015.

P. C. :

This is an application filed under section 378 (4) of the Criminal Procedure Code seeking to file appeal against judgment dated 20th March, 2015, whereby the learned Metropolitan Magistrate, 43rd Court, Borivali, Mumbai, has dismissed the complaint dated C.C. No.1279/SS/2006 and acquitted the Respondent No.2-accused of offence under section 138 of the Negotiable Instruments Act.

2. The brief facts leading to the present appeal are as under:-

The Applicant-complainant had business dealings with the

Respondent No.2-accused and that in repayment consideration due and payable from the Respondent No.2-accused to the Applicant-complainant, the Respondent No.2-accused had issued a cheque bearing No.241581 dated 14th April, 2006 for Rs.5,20,000/-. Said cheque was presented in the Bank and dishonoured on 19th April, 2006 with remark as 'Account closed'. The statutory notice dated 17th May 2006 was issued to the Respondent No.2-accused but the accused did not reply to the said notice and did not pay the cheque amount and hence the Applicant-complainant filed the complaint under section 138 of the Negotiable instruments Act.

3. Upon being served with the summons, the Respondent No.2-accused put in his appearance and pleaded not guilty and claimed to be tried. The Applicant-complainant and the Respondent No.2-accused adduced evidence and upon considering the evidence adduced by both the parties, the learned Magistrate held that the defence of the Respondent No.2-accused that he had given the cheque to the daughter of the complainant for paying the premium of LIC policy and that the same was misused by the Applicant-complainant, was probable. The learned Magistrate held that the Applicant-complainant has concealed the material facts in respect of the transaction. The learned Magistrate

also disbelieved and discarded the evidence of the witnesses examined by the Applicant-complainant. The learned Magistrate therefore, held that the essential ingredients of the section 138 of the Negotiable Instruments were not met. Hence, the learned Magistrate acquitted the accused of the offence under section 138 of the Negotiable Instruments Act.

4. With the assistants of the learned counsel for the Applicant-complainant, I have gone through the notes of evidence and impugned judgment. Perusal of the complaint reveals that the Applicant-complainant has merely stated that he was having business dealings with the Respondent No.2-accused and the Respondent No.2-accused had issued the cheque towards the repayment of the consideration due and payable to him. The Applicant-complainant had not given any details of such transaction. It may be mentioned that presumption under section 139 of the Negotiable Instruments Act reads as under :

> ***139.*** *Presumption in favour of holder.—It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.*

5. The said presumption is rebuttable. The defence of the Respondent No.2-accused in the present case is that he had given the cheque to the daughter of the Applicant-complainant for payment of premium of LIC policy. In this regard the Respondent No.2-accused has examined the Chief Manager of LIC. His evidence clearly indicates that the daughter of the Applicant-complainant is a LIC agent. The evidence of D.W.-3, the Chief Manager further reveals that the Respondent No.2-accused is a policy holder of LIC policy having No.902590063 and that the said policy was purchased and premium of Rs.769/- was paid by cheque drawn from the account of Rashmi Singh, daughter of the Applicant-complainant. The passbook of the Respondent No.2-accused (Exh.D2), which on record reveals that there was sufficient fund in the account of the Respondent No.2 to make the payment of said premium. As rightly held by the learned trial Judge, there was no reason as to why the daughter of the complainant had paid the premium in respect of the policy purchased by the Respondent No.2-accused by drawing a cheque from her account.

6. In the light of this fact, the defence of the Respondent No.2-accused that he had issued a blank cheque to the daughter of the complainant for paying the premium of the policy and the same has

been subsequently misused by the Applicant-complainant, is probable. Findings of the learned trial Judge are neither illegal nor perverse. Hence, I do not find any reason to interfere with the same.

7. In the circumstances, the application is dismissed. Leave is rejected.

(ANUJA PRABHUDESSAI, J.)