

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

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CRIMINAL APPLICATION NO.409 OF 2013

Sudarshan Chemical Industries Ltd.	.. Applicant
Vs.	
Shoban Pigments & Ors.	.. Respondents

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Mr.Subodh Desai and Mr.Himanshu Pradhan i/b.Chitinis & Co.,
Advocate for the Applicant.
Mr.Sahil Mahajan, Advocate for Respondent Nos.1 to 3.
Ms.Anamika Malhotra, A.P.P. for Respondent – State.

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CORAM : ABHAY M. THIPSAY, J.

DATED : JANUARY 19, 2015.

ORAL ORDER :

The applicant, a limited company, had prosecuted the respondent nos.1, 2 and 3 on the allegation that these respondents had committed an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (N.I. Act). The respondent no.1 herein is a proprietary concern. The respondent no.2 herein is the proprietor of the respondent no.1, and the respondent no.3 herein is said to be the constituted attorney of the proprietor. After holding a trial, the Judicial Magistrate First Class, Pune, found the said respondents not guilty, and passed an order of acquittal. Being aggrieved by the said

order of acquittal, the applicants have approached this Court and are, by the present application, seeking leave to file an Appeal from the said order of acquittal.

2 I have heard Mr.Subodh Desai, the learned counsel for the applicant. I have heard Mr.Sahil Mahajan, the leaned counsel for respondent nos.1, 2 and 3. With their assistance, I have gone through the application and the annexures thereto, which include not only the impugned Judgment, but also the evidence adduced during the trial and a copy of the complaint.

2 For the sake of convenience and clarity, the applicant shall hereinafter be referred to as 'the complainant' and the respondent nos.1, 2 and 3 as 'the accused'.

3 The case of the complainant was that they had some business transactions with the accused and that accused had been purchasing Pigments from the complainant on credit basis. That, the accused had purchased Pigments to the tune of Rs.9,34,152/- (Rupees Nine Lac Thirty Four Thousand One Hundred and Fifty Two) 'from time to time'.The case, apparently, was that in discharge of the liability to pay for the purchase of the said Pigments, the accused issued a

cheque bearing No.652792 dated 5th June, 2009 for Rs.9,34,152/- (Rupees Nine Lac Thirty Four Thousand One Hundred and Fifty Two) drawn on Indian Bank. This cheque bounced and since the amount was not paid even after the demand notice, the accused were prosecuted.

4 In the course of trial, it transpired that the said cheque had been forwarded by the accused to the complainant on 22nd April, 2008 itself alongwith a forwarding letter of that date. The said cheque was a blank cheque. This letter had been tendered in evidence before the trial Court and was marked as Exhibit-74.

5 The cheque was presented for payment by the complainant in the month of June 2009 i.e. after a period of more than one year from the date of receipt of the said cheque which was, at that time, a blank cheque.

6 It also transpired, in the course of trial, that the accused had already issued instructions to their bankers by a letter dated 6th May, 2009 to stop payment of the said cheque. This letter was also tendered in evidence, and was marked as Exhibit-73.

7 Thus, it was revealed during the trial that a blank signed cheque was given by the accused persons to the complainant, which was, later on, filled in by the complainant, and deposited in bank. However, this is not the case made out in the complaint. This is not admitted even in the evidence that was adduced before the Magistrate. On the contrary, inspite of the suggestion given to that effect in the cross-examination, the same was denied by the witness for the complainant. It is, further, interesting to note that the complaint does not speak about the accused giving or issuing cheque at all. A reference of the cheque comes in the complaint for first time by a statement to the effect that 'the cheque was deposited'. Thus, it is evident that the complainant wanted to hide the circumstances in which the cheque came to be issued, and that it was a blank signed cheque.

8 In spite of this position, an attempt is made before this Court to find fault of the order of acquittal by saying that there was a running account between the parties, and that thereafter, when the cheque in question was deposited, there was indeed a liability in the amount of the cheque. It was submitted that, therefore, it was immaterial that the cheque in question was a blank signed cheque on

which the matter was written on behalf of the complainant, and that the amount thereon had been put by the complainant. There is, however, no explanation as to why in that case, it was attempted to be suppressed and why, it was falsely denied in the cross-examination.

9 In my opinion, the impugned judgment is proper and legal. The complainant, by giving a wrong version of the happenings has tried to rely only on the existence of the cheque to support the theory of the accused being liable to pay the amount of the said cheque.

10 There is considerable time gap between the delivery of the cheque by the accused to the complainant and its deposit in bank. What were the transactions between the accused and the complainant at that time, and what was the understanding between the parties when the said blank signed cheque was issued, was suppressed by the complainant. Obviously, it is to avoid the scrutiny of the transactions for ascertaining whether a liability to the extent of the amount of cheque existed on the given date, that the fact of having received a blank signed cheque much earlier, was suppressed.

11 In the circumstances, the doubt felt by the Magistrate about the truth of the complainant's version, cannot be said to be unreasonable. Consequently, there is no case for interfering with the order of acquittal.

12 All said and done, in any case, the view of the matter, as can be taken by the Magistrate, is a *possible view*. It is well settled that under such circumstances, grant of leave would be futile.

13 Leave refused.

14 The application is rejected.

(ABHAY M. THIPSAY, J.)