

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.297 OF 2014

Mrs.Reeta Bimal Kumar Bhiryani .. Applicant
Versus
The State of Maharashtra & Anr .. Respondents

Mr.Udayan S. Jain, Advocate for the applicant.

Mrs.S.V.Gajare, APP for the Respondent State.

CORAM : ABHAY M. THIPSAY, J.

DATED : 10th APRIL, 2015

P.C. :

1 The applicant is the original complainant. She had prosecuted the respondent no.2 on the allegation that the respondent no.2 had committed the offence punishable under section 138 of the Negotiable Instruments Act. The Judicial Magistrate First Class, Pune, after holding a trial, held the respondent no.2 not guilty and passed an order of acquittal. The applicant is aggrieved by the said order of acquittal, and is therefore, by the present application, seeking leave to Appeal therefrom.

2 For the sake of convenience and clarity, hereinafter the 'applicant' shall be referred to as the 'complainant', and the 'respondent no.2' as the 'accused'.

3 I have heard the learned counsel for the applicant in support of the application. With his assistance, I have gone through the application, and the annexures thereto, including the complaint.

4 The case of the complainant was that the accused had taken a hand loan of Rs.10,50,000/- from the complainant during the period from 20th June 2010 to 20th July 2010 for her business, as also for her son's business and needs. That, in repayment of the said loan, the accused had issued total six cheques, aggregating an amount of Rs.10,50,000/- which were dishonored with the remark '*funds insufficient*'. Since the amount of the cheques was not paid in spite of notice, the complaint had been filed.

5 In the cross-examination of the complaint, it was revealed that the son of the accused had paid an amount of Rs.3,00,000/- to the complainant. It was before the cheques in question were presented and dishonored i.e. on 10th July 2010. The complainant volunteered to state before the Magistrate, when this was brought on record, that the said cheque was in connection with some other transaction which the complainant had, independently, with the son of the accused. However, she expressed inability to produce any documents relating to the said independent transaction. Moreover, the complainant also admitted that on 13th July 2010, she had received an amount of Rs.1,00,000/- from the accused. Undoubtedly, the complainant did volunteer to add that the said amount was not in the context of the present transactions, but this was not further substantiated by the complainant.

6 Interestingly, when it was suggested to the complainant in the course of cross-examination, that 'except her bare words, there was no evidence to show that she had given an amount of Rs.10,50,000/- to the accused', she denied it, and volunteered to state that 'she had receipts issued by the accused' against the said payments. She categorically denied that the accused had not issued any such receipts. However, admittedly, no such receipts were produced by the complainant before the Magistrate during the trial.

6 The doubt felt by the Magistrate about the truth of the version of the complainant is reasonable and proper.

7 No case for grant of leave to Appeal is made out.

8 Leave refused.

9 Application is rejected.

(ABHAY M.THIPSAY, J)