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IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 623 OF 2009
WITH
CRIMINAL REVISION APPLICATION NO. 628 OF 2009

Rajendra Prasad Guru Prasad Pandey … Applicant

Versus

Mrs. Smita H. Bhoir and anr. … Respondents

None for the applicant.

Smt.Smita H. Bhoir, respondent no. 1 present in person.

CORAM : M.L. TAHALIYANI, J.
DATED : MAY 06, 2015

P.C.

These two revision applications impugn the orders dated 1st August, 2009 passed by the 3rd Ad Hoc Additional Sessions Judge, Sewree in Criminal Appeal No. 141 of 2007 and Criminal Appeal No. 140 of 2007 arising out of the order dated 1st August, 2007 passed by the learned Metropolitan Magistrate, 20th Court, Mazgaon in Criminal Case No. 2681/SS/2005 and Criminal Case No. 2643/SS/2005.

2. The applicant was convicted by the learned Magistrate for the offence punishable under section 138 of the Negotiable Instrument Act and has been sentenced to suffer S.I. for two months in each case and to pay fine

of Rs.1,78,000/- in Criminal Case No. 2681/SS/2005 and Rs.46,000/- in Criminal Case No.2643/SS/2005. It was further directed that the amount of Rs.1,76,000/- and Rs.45,000/- respectively in both cases shall be given to respondent no. 1 Smita/original complainant by way of compensation. His appeals stood dismissed and therefore, present revision applications. The case of respondent no. 1/original complainant in both Criminal Cases i.e. Criminal Case No. 2681/SW/2005 and 2643/SS/2005 is that respondent no.1 had invested the amount in the company floated by the applicant and his co-accused. By the passage of time, the said amount was returned to respondent no.1 by way of cheques. The cheques were dishonoured by the bankers with remark “refer to drawer”. It is thus clear that the cheques were dishonoured for want of sufficient funds. After issuing statutory notice and after waiting for the statutory period, respondent no. 1 had filed complaints against the applicant for the abovestated offences under Negotiable Instruments Act. After recording evidence, learned Magistrate was satisfied that the cheques were issued in discharge of liability and that they were dishonoured. The learned Magistrate was also satisfied with the service of notice and he therefore, convicted the applicant and his co accused as both were working partners of Akash Enterprises.

3. As already stated, the appeals filed by the applicant has been dismissed and the appellate court has given a concurrent finding after

appreciating the evidence on record.

4. During the course of hearing of the revision applications, it was submitted by respondent no. 1 that the applicant has avoided to appear before this court time and again. It was brought to my notice that these revision applications were earlier dismissed by this court (Coram A.R. Joshi,J.). The record also shows that the applicant had moved Hon'ble Supreme Court against the order of this court. The Hon'ble Supreme Court directed to remand the Revision Applications back to this court for fresh hearing.

5. It is noted that the applicant has chosen to remain absent though the revision applications were shown on board very frequently. Respondent no.1 who is female has been attending this court on all the dates of hearing diligently.

6. The facts of the case have already been stated by me hereinabove. The evidence of PW no. 1/complainant and other witnesses has supported the case of respondent no.1 and the learned Magistrate has rightly convicted the applicant. I do not find anything wrong in the order of the learned Magistrate. Similarly the appellate court has also taken a same view on the same set of facts. Since there are two views of two courts below which are concurrent, it is not possible for this court to interfere with the view

expressed by the appellate court unless some perversity is shown in the same. After having examined both the impugned orders and record, I do not find any perversity in either of the orders. I do not find any substance in the revisions. The revision applications deserve to be dismissed.

7. Before I part with the revision applications, it is necessary to be noted that the applicant had made a statement before the Hon'ble Supreme Court that he has deposited the fine amount and that respondent no.1 had withdrawn the same. Respondent no. 1 submits that the applicant had never deposited the amount and therefore, she had no occasion to withdraw the said amount. This court therefore, called a report from the Registrar (Judicial) to find out whether the amount was deposited and withdrawn. The reports from the Registrar (Judicial) are awaited.

8. In any event, the issue is not as to whether the applicant has deposited the amount or not. The issue involved in the applications is on merits of the case. The merits of the case do not permit any relief to the applicant. Hence, I pass the following order :

9. In the result, both Revision Applications are dismissed. The learned trial court to take necessary steps to execute the impugned orders.

(JUDGE)