IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 446 OF 2015

Tasgaon Sahakari Patsanstha Ltd., Mumbai .. Applicant

v/s.

The State of Maharashtra & Anr. ..Respondents

Mr. Imtiyaz A.I.Patel for the Applicant.
Mr.J.H.Ramugade, APP for the State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : OCTOBER 17, 2015.

P.C.

1. The applicant, who was complainant in C.C.No.3098/SS/2010, on the file of the Metropolitan Magistrate's 7th Court, Dadar, Mumbai, has filed the application seeking leave to challenge the judgment dated 20th July, 2015, whereby the learned Metropolitan Magistrate, 7th Court, Dadar, Mumbai has acquitted the respondent no.2 herein for offence under Section 138 of Negotiable Instruments Act.

2. The case of the applicant-complainant is that the respondent

no.2-accused had availed loan of Rs. 7 lakhs and that he had issued cheque bearing no. 391546 for Rs.8,42,911/- towards repayment of the said loan amount. The said cheque was presented in the bank and was dishonoured for “insufficient funds”. The applicant herein issued statutory notice to the respondent. Despite receipt of the notice, the respondent-accused did not pay the cheque amount. Hence, the complainant filed the complaint under section 138 of the N.I.Act.

3. Having been served with the summons, the respondent accused put in his appearance. The plea of the respondent-accused was recorded. He pleaded not guilty and claimed to be tried.

4. Upon considering the evidence adduced by the complainant, the learned Magistrate held that the complainant had failed to establish that the cheque was issued towards the discharge of legaly enforceable debt, and hence acquitted the accused under Section 138 of the Negotiable Instruments Act.

5. With the assistance of the learned counsel for the applicant-complainant, I have gone through the notes of evidence, the documents placed on record as well as the impugned judgment. The case of the applicant-complainant was that the respondent no.2 accused had availed loan of Rs.7 lakhs and that he had issued subject cheque of Rs.84,2,911/- towards repayment of the said loan amount.

6. The respondent no.2 accused had not denied having availed the loan, but he has raised a defence that he had issued 10 blank cheques as security. He had claimed that he had repaid the said loan. The respondent-accused had also examined witness to substantiate his defence. It is pertinent to note that PW1 has admitted in his cross examination that the respondent no.2-accused had paid the last instalment in October 2008. He has further stated that he was unable to state as to how much amount the accused had paid till October 2008. He has further stated that whatever amount has been collected by them from the accused as his daily deposits has been adjusted towards his second loan. He has stated that from his daily collection the accused used to deposit Rs.25,000/- to 26,000/- per

month with the complainant society. He has further stated that till October 2008 they have adjusted all the amount deposited by the accused towards his outstanding loan. He has submitted that since October 2006 till October 2008 the accused has not withdrawn any amount deposited by him with the complainant society by way of daily collection. He has admitted that the accused was repaying the loan from his daily collection. He has admitted that from the daily collection, they had received an amount of Rs.7 lakhs from the accused. The statement of this witness therefore supports the defence that the accused had repaid the loan from his daily contribution. This fact is sufficient to rebutt the presumption under Section 139 of the Negotiable Instruments Act. The defence is probable. The finding of the learned trial Judge are based on the evidence on record and are neither illegal nor perverse. Hence, there is no reason to interfere with the same. The application is dismissed. Leave is rejected.

(ANUJA PRABHUDESSAI, J.)