IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 360 OF 2014

Miran Ahmed Mohideen Alias
A.K.M. Ahmed Mohideen .. Applicant

v/s.
The State of Maharashtra & Anr. ..Respondents

Mr. Prakash S. Jain for the applicant
Mr. Surya Narayan Panda for the respondent no.2
Mr. J.H. Ramugade, APP for respondent State

CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED: 30th SEPTEMBER, 2015.

P.C.

1. The applicant herein was the complainant in C.C. No.1547/SS/2012 filed before the learned Metropolitan Magistrate, 63rd Court, Andheri, Mumbai under Section 138 of the N.I. Act.

2. The case of the complainant in brief is that he and his late father were the owners of the plot, admeasuring 255 sq.ft.. By Sale Deed dated 15.12.2004, they had sold the said plot to the accused and his father for a total consideration of Rs.36,00,000/-.

The complainant had claimed that the accused and his father had paid part consideration of Rs.11,00,000/-. Simultaneously they had executed Deed of Mortgage in respect of the said plot in favour of the complainant and his father for balance consideration of Rs.25,00,000/-, which they had agreed to repay with interest @ 7.5% p.a. within three years. The complainant had claimed that on 14.11.2007, he and his father had executed Deed of Release and redeemed the mortgage at the request of accused and his father.

3. The complainant had alleged that the accused in order to pay the outstanding amount of mortgage money had issued a Cheque bearing No.320939 for Rs.6,00,000/-. The said cheque was deposited in the bank on 08.05.2012 but was dishonoured on the same day for the reason “account closed”. The complainant issued a statutory notice dated 21.05.2012. The complainant claimed that the accused had failed to pay the cheque amount despite receipt of the notice and hence, he initiated proceedings u/s 138 of the N.I. Act.

4. The accused had pleaded not guilty and had taken a specific defence that he had paid an amount of Rs.25,00,000/- at the time of execution of the Release Deed. The accused had further claimed that at the time of execution of the said Deed of Release, he had borrowed a sum of Rs.6,00,000/- from the father of the complainant and that the complainant had instructed him to repay the sum of Rs.3,00,000/- to him and the balance amount of Rs.3,00,000/- to his step mother. The accused had claimed that he had paid the loan amount but the complainant had misused the cheque and had lodged a false complaint against him.

5. After considering the evidence adduced by the respective parties, the learned Magistrate held that the complainant in his cross-examination has admitted having executed a receipt cum-Release Deed at Exh.17 dated 14.11.2007, executed by him and his father in favour of the accused and his father, wherein they have admitted having received a sum of Rs.25,00,000/- from the

accused. The learned Magistrate further held that the complainant in his cross-examination has admitted that in the income tax returns, his father had disclosed that the amount of Rs.6,00,000/- along with interest was due from the accused.

6. The complainant had also admitted that the accused has handed over the blank cheque and that he had filled in the details in the cheque subsequently. The learned Magistrate held that the said admissions support the defence that at the time of the execution of the Deed of Release at Exh.17, the accused had paid the entire amount of Rs.25,00,000/- to the complainant and his father after borrowing an amount of Rs.6,00,000/- from the father of the complainant.

7. The learned Magistrate further held that though PW-1 had initially denied having received any money from the accused, he has subsequently admitted that the accused had credited the amount of Rs.1,00,000/- on 14.01.2011 vide cheque No.267693,

Rs.1,50,000/- on 19.12.2011 vide Cheque No. 627434. The complainant had thus admitted that he has received a sum of Rs.2,50,000/-. Though the complainant had denied that the said amount was towards part payment of the subject cheque, the complainant had not shown that he was having any other loan or any other dealing with the accused. PW-1 further admitted that in the book of accounts and the balance-sheet, he has disclosed the receipt of Rs.2,50,000/- from the accused. The learned Magistrate further held that even before the cheque was deposited, the complainant had already received an amount of Rs.2,50,000/- and as such the complainant was not entitled for the cheque amount of Rs.6,00,000/-. Moreover, the complainant had admitted that during the pendency of the proceedings, the accused had paid Rs.3,00,000/- by cheque. The learned Magistrate, therefore, held that the complainant has failed to prove that the subject cheque was issued in discharge of legally enforcible debt.

8. With the assistance of the learned Counsel for the applicant and the learned Counsel for the respondent no.2, I have perused the records as well as the impugned order. It is not in dispute that the complainant and his father had sold a plot of land to the accused for an amount of Rs.36,00,000/-. The accused and his father had paid part consideration of Rs.11,00,000/- and had executed a deed of mortgage in respect of the balance consideration of Rs.25,00,000/- which was to be repaid with interest @ 7.5% p.a. within three years. It is not in dispute that the complainant and his father and the accused had executed a Deed of Release. A perusal of the said document at Exh.17 clearly reveals that the complainant and his father have received a sum of Rs.25,00,000/- as on the date of the execution of the said Deed of Release dated 14.11.2007.

9. The defence of the accused is that on the date of the execution of the said Deed of Release, he had borrowed a sum of Rs.6,00,000/- from the complainant and that he had handed over

a blank cheque to the complainant. The fact that the accused has handed over the blank cheque to the complainant is not in dispute. The complainant had admitted that the contents of the cheque were written by him subsequently. There is also a clear admission on the part of the complainant that the accused had paid a total sum of Rs.2,50,000/- even before the cheque was deposited in the bank. There is absolutely no evidence to show that there was any other loan transaction or any other transaction between the complainant and the accused and that the said amount of Rs.2,50,000/- was paid in respect of the different loan transaction or different transaction in any other nature. Thus, as on the date of the presentation of the cheuqe, the accused had already paid sum of Rs.2,50,000/- to the complainant, despite which the complainant had written the cheque for Rs.6,00,000/- and presented the same in the bank. The complainant had thus failed to prove that the cheque was issued in discharge of legally enforcible debt. The findings of the trial Court are, therefore, neither illegal nor perverse. Hence, there is no reason to interfere with the impugned order.

10. Under the circumstances, the application is dismissed. Consequently leave is rejected.

(ANUJA PRABHUDESSAI, J.)

Certificate

Certified to be true and correct copy of the original signed judgment / order.