IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 384 OF 2014

Sapat International Pvt. Ltd. .. Applicant
(Org. Complainant.)

v/s.

Rajesh Nagnore & Ors. ..Respondents

Mr. Umesh Desai for the Applicant.
Mr.Jayant Bodke for the Respondent No.1
Mr.J.H.Ramugade, APP for the State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : OCTOBER 07, 2015.

P.C.

1. The applicant herein, who was the complainant in C.C.No. 3052 of 2011, on the file of the learned Metropolitan Magistrate's 33rd Court, Ballard Pier, Mumbai, has sought leave to challenge the order of acquittal dated 14.08.2014, whereby the learned Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai has acquitted the respondent no.1 for the offence under Section 138 of the Negotiable Instruments Act.

2. The applicant company is engaged in manufacturing and export of various items including tea. The respondent no.1 accused was an agent-cum-stockist and distributor, doing business in the name of M/s. Raj Sales, a proprietary firm. In the course of the business transactions the respondent no.1 accused had placed orders for tea and as per the orders the complainant company had supplied the tea to the accused by providing credit facilities. It was the case of the applicant-complainant that as per the entry dated 6.8.2010 the respondent no.1-accused was liable to pay the outstanding amount of Rs.64,225.38. The respondent no.1-accused had agreed to pay the said amount and subsequently issued a cheque dated 6.4.2011 for the said amount. The said cheque was deposited in the bank, but was dishonoured for the reason “payment stopped by drawer”. The complainant company issued notice to the respondent no.1-accused. Despite receipt of the said notice, the respondent no.1-accused did not pay the cheque amount. Hence the applicant-complainant initiated proceeding under Section 138 of the Negotiable Instruments Act .

3. Having been served with the summons, the respondent no.1-accused put in his appearance. The plea of the respondent no.1-accused was recorded. The respondent no.1-accused pleaded not guilty and claimed to be tried.

4. Considering the evidence adduced by the complainant, the learned Magistrate held that the complainant had failed to prove that the cheque was issued towards the discharge of legally enforceable debt. The learned Magistrate therefore dismissed the complaint.

5. With the assistance of the learned Counsel for the applicant-complainant, I have gone through the notes of evidence, as well as the documents placed on record. The complaint as well as the evidence of CW1, the authorized representative of the complainant company reveals that after adjusting the accounts of the accused as per the entry made in statement of account dated 6.8.2010, the outstanding amount payable by the accused was Rs.64225.38. CW1 had deposed that this fact was brought to the notice of the accused and that the respondent no.1-accused had given an undertaking that

he would pay the same on or before 26.07.2010. The evidence of CW1 further reveals that the respondent no.1-accused had issued the cheque no.050802 dated 6.4.2011 for Rs.64225.38 towards the said outstanding dues. It is to be noted that in the cross examination CW1 has stated that as per the balance sheet the outstanding amount as against the accused was Rs.64,255.38. He has deposed that the accused used to make the payment as per the bills and sometimes he used to make lumpsum payment. He has further stated that the company used to send the copy of the ledger statement to the accused for confirmation at the end of every financial year by courier service. He has further admitted in his cross examination that there were no business dealings between the complainant company and the accused after 29.8.2009. He has admitted that as per the entry dated 6.8.2010 the disputed claims were settled. He has further admitted that since the year 2009 there were disputes between the complainant and the accused for deficiency in the quantity of the goods supplied. He has further admitted that in the reply dated 2.4.2011, the accused has made a reference to two invoices. He has stated that the dispute in respect of the said two invoices has been settled by the complainant.

6. The evidence of CW1 thus clearly indicates that though the respondent no.1 was engaged as a stockist-cum-distributor, the business transaction between the complainant and the respondent no.1 had come to an end on 29.8.2009. The evidence reveals that there were disputes between the complainant and the accused regarding deficiency in the quantity of goods.

7. Though CW1 had stated that the disputed amount as per the said invoices was settled, as rightly held by the learned trial Judge, there is no evidence to show the manner or the mode of settlement. The disputed cheque according to CW1 was issued in respect of the outstanding amount reflected in respect of entry dated 6.8.2010. The evidence of CW1 however reveals that the said dispute was settled. In the light of this admission, the learned Judge was perfectly justified in holding that the complainant has failed to prove that the cheque was issued towards discharge of legally enforceable debt. The impugned order is neither illegal nor perverse. The

defence is probable and the view taken is justifiable.

8. Under the circumstances, and in view of the discussion supra, the application is dismissed. Leave is rejected

(ANUJA PRABHUDESSAI, J.)

CERTIFICATE

Certified to be true and correct as per the original signed judgment/order.