

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.492 OF 2013

Rupesh Vinod Pardeshi

...Applicant

Versus

State of Maharashtra & Anr.

...Respondents

.....

Mr. Chandrakant P. Deogirikar for the Applicant.

Mr. Ashok B. Tajane for Respondent No.2

Mr. Rajesh More, APP for Respondent No.1-State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : 14th SEPTEMBER, 2015.

P. C. :

The Applicant herein is the complainant in Criminal Case No.1216 of 2012 filed against Respondent No.2 before Judicial Magistrate, First Class, Vadgaon Mawal, for the offence punishable under section 138 of the Negotiable Instruments Act.

2. The case of the complainant was that he had entered into an agreement with the accused for construction of the house and that he had completed part of the construction and that the accused had issued two cheques for a total amount of Rs.4,00,000/- towards the cost of construction. Said cheques were deposited in Lonawala Sahakari Bank, which were dishonoured for insufficient funds.

Statutory notice was issued to the Respondent No.2-accused. Despite receipt of the said notice Respondent No.2 did not pay the cheques amount hence, the proceedings under section 138 of the Negotiable Instruments Act were filed.

3. Upon service of summons the Respondent No.2 put in his appearance. He pleaded not guilty and claimed to be tried. The defence of the Respondent No.2- accused, as can be seen from the statement under section 313 of Criminal Procedure Code and the tenor of cross examination of the complainant, is that he had given advance money to the Applicant- complainant for construction of the house and since the complainant had not completed the construction, he is not liable to pay the said amount.

4. On considering the evidence adduced by the complainant as well as the defence raised by Respondent No.2, the learned Magistrate had acquitted Respondent No.2-accused. Aggrieved by the said order the Applicant-complainant has filed this application for leave to appeal.

5. With the assistance of learned counsel for the Applicant-complainant I have gone through the notes of evidence as well as the

impugned order. The evidence of the complainant reveals that he had entered into an agreement with Respondent No.2 for construction of the house as per the terms and conditions specified in said agreement dated 1st November, 2011. Clause two of the said agreement reveals that the Applicant - complainant had agreed to construct the house @Rs.1251 sq.ft. There is also an agreement between the parties to pay 20% of the total amount as advance. Furthermore, parties had also agreed that the cost of the material as well as the cost of construction would be paid from time to time depending upon the progress of the work. It is pertinent to note that the Applicant-complainant in his affidavit of evidence has not specified the nature of work which was completed by him. The complainant in his affidavit has stated that the cheque was issued towards the construction work completed by him in accordance with the agreement. In the cross-examination the Applicant-complainant has admitted that as per the agreement he was required to complete total 24 works. He has admitted in his cross examination that he had not produced the bills raised by him towards the completed work. He has also admitted that the work which was completed was not certified by the Architect. He has admitted that he has not placed on record bills in respect of construction material. He has admitted that he has not produced the bills in respect of the

kitchen tiles, entrance door, sliding windows, framing, water tank, etc. He has further admitted that out of 24 works, he has done only 8 types of work. He has also admitted that the date, name and amount on cheque No.210786 was in his handwriting. In the light of these admissions learned Magistrate has held that the defence of the Respondent No.2 that the amount was paid to him as advance and since the Applicant-complainant did not complete the construction there was no existing liability. The Applicant-complainant had not raised the bill in respect of the eight construction works completed by him. There is no evidence to prove that the cost of said eight construction works and construction material was Rs.2,00,000/- or that the cheque amount was towards the cost of the same construction works and material. Under the circumstances the findings of the learned Magistrate in my view are not perverse or illegal. Reasons given are justifiable. Hence, this is not a fit case for granting leave to appeal.

6. In the circumstances, the application is dismissed. Leave is rejected.

(ANUJA PRABHUDESSAI, J.)

CERTIFICATE

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