

Ladda

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No. 582 of 2013.

M/s Saturn Chemicals
Through its Proprietor
Mr Mathews Jacob.

..Applicant.

Vs

M/s Eshaditi Chemicals Pvt Ltd & Ors

..Respondents.

Mr M. Janardhanan, Advocate for the Applicant.

Mr A.R. Patil, APP for the State.

Mr Santosh Pawar, Advocate for Respondent No.3.

Mr Ashutosh M. Kulkarni, Advocate for Respondent
Nos. 2, 4 and 5.

CORAM : A.R.JOSHI,J

DATE : 23rd July, 2015

PC. :

1) Heard rival submissions on this application for leave to file appeal challenging the acquittal of the respondents-accused in the matter of offence punishable under section 138 of the Negotiable Instruments Act.

2) The applicant/original complainant had lodged a complaint against respondent No.1-accused Company and its Directors / respondent Nos. 2 to 5 for offence u/s 138 of N.I. Act for dishonour of the cheque for the amount of Rs. 50 lakhs. According to the complainant/applicant, there was a

Memorandum of Understanding (for short the “MoU”) entered into between him and the Company i.e. respondent No.1 for supply of certain quantity of the chemical known as potassium permanganate. The said MoU was for the period of three years. As and by way of security, the complainant had given an amount of Rs. 50 lakhs to respondent No.1-company. Within the period of three years of the MoU there was nothing like supply of chemical and as such after the lapse of three years period, according to the complainant, he was entitled to return back the security deposit of Rs.50 lakhs. According to him, the payment of Rs. 50 lakhs was made by him by way of Demand Draft and also by cheques, as initially three cheques given by him towards the same were dishonoured. Again, according to him, there were two letters written on behalf of respondent No.1 company dated 29th March, 2006 and 31st March, 2006 acknowledging receipt of Rs. 50 lakhs as and by way of security given by the complainant. Thereafter, vide covering letter dated 12th July, 2006 post dated cheque was given to the complainant by respondent No.1 company. This cheque was bearing No. 996516 dated 3rd June, 2008. It is significant to note that the MoU period was ending on 2nd June, 2008 and the cheque is dated 3rd June, 2008 i.e. which was dishonoured, thus, resulted in filing of the present complaint.

3) Defence of the respondent-accused is that of total denial and no transaction at all entered into between the company and the original complainant. However, it is specifically required to

be mentioned that there is nothing brought before the trial Court as to how the concerned dishonoured cheque came into possession of the complainant. It is a factual position that none of the respondents / original accused entered into the witness box for giving their evidence. So also, they did not examine anybody in support of their case of denial. It appears that the Trial Court was influenced by the answer of the complainant in his cross-examination that he did not produce his statement of accounts showing his financial feasibility to give Rs.50 lakhs to the respondents by way of security in terms of the MoU. Also, what weighed with the trial Court was, the failure of the complainant to produce the original MoU. Apparently, in his affidavit in lieu of examination-in-chief, in paragraph no.3, the complainant had mentioned that he had filed the original MoU before the trial Court. Definitely, before the Court there was a copy of the MoU and as such this copy was not exhibited by the trial Court. But two letters acknowledging receipt of Rs. 50 lakhs given on behalf of the Respondent-Company were taken on record and marked as "Exhibits". These letters are as referred to above and those are dated 29.3.2006 and 31.3.2006. Even there is another covering letter dated 12th June, 2006 by which the subject matter cheque came in possession of the complainant. This letter is also marked as "Exhibit".

4) During the arguments, the learned Counsel for the respective respondents stated that the respondents-accused have

denied their signatures on all those letters. But it is a factual position that they did not take any step to disprove that those letters do not bear their signatures. Even they did not enter into witness box to deny that no such letters were written by respondent No.1 company. Even the trial Court over looked the main aspect as to the presumption of the cheque when there is nothing on record brought by the respondent as to how the cheque for Rs.50 lakhs having the signature of respondent No.2, came into possession of the complainant.

5) Considering the above, in the opinion of this Court, there are much debatable issues which are required to be dealt with, in detail, at the time of final adjudication of the appeal and hence the present application for leave to appeal is allowed.

6) The appeal is admitted. Process under section 390 of Cr.P.C. be issued against respondent Nos.2 to 5 with direction to the trial Court to release them on bail in the sum of Rs.500/-.

7) Call for R and P.

8) Application for leave to appeal is disposed of accordingly.

(A.R.JOSHI, J.)