

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

APPLICATION FOR LEAVE TO APPEAL (PVT) NO.589 OF 2013

Divya Packing Private Limited ... **Applicant**
V/s.
State of Maharashtra & Anr. ... **Respondents**

.....

Mr.Pramit K. Mishra i/b. Bhandary & Bhandary, Advocate for the Applicant.

Mrs.M.R.Tidke, APP for the Respondent/State.

....

CORAM : A. M. THIPSAY J.

DATED : 12TH JANUARY, 2015

P.C.

1. Heard Mr.Mishra, the learned counsel for the applicant.

2. The applicant - a Private Limited Company - had prosecuted the respondent Nos.2,3 and 4 herein on the allegation of their having committed an offence punishable under section 138 of the Negotiable Instruments Act. The respondent No.2 is a Private Limited Company and the respondent Nos.3 and 4 are the Directors thereof. The cheque had been drawn by the respondent No.2 and the respondent Nos.3 and 4 were being prosecuted in

their capacity as the Directors of the respondent No.2 and on the allegation of they being liable for the offence committed by respondent No.2, by virtue of Section 141 of the Negotiable Instruments Act. After holding a trial, the Metropolitan Magistrate, 14th Court, Girgaum, Mumbai held the respondent Nos.2 and 3 herein guilty of an offence punishable under Section 138 of the Negotiable Instruments Act and sentenced them in accordance with law. He, however, found that respondent No.4 was not guilty and passed an order of acquitting her. The applicant is aggrieved by the said order of acquittal and is, therefore, by the present application, seeking leave to appeal against the said order of acquittal.

3. I have considered the submissions made by the learned counsel for the applicant. I have gone through the application and the copy of the impugned judgment that is annexed thereto.

4. The complaint was in respect of four cheques. As aforesaid, all had been drawn by the respondent No.2 on an account maintained by it. The question of the respondent No.4 being liable arose only on the basis of the provision of Section 141 of the Negotiable Instruments Act.

5. The learned Magistrate, while holding the respondent No.3 guilty of the alleged offence, observed that two of the

cheques in respect of which the complaint had been filed, signed by the respondent No.3. The Magistrate observed that the applicant's witness had admitted that no cheque, out of the four cheques, had been signed by the respondent No.4. He, therefore, concluded that there was nothing to show that the respondent No. 4 was in-charge of the business or affairs of the respondent No.2, or was liable in respect of alleged offence by virtue of Section 141 of the Negotiable Instruments Act.

6. What is submitted by the learned counsel for the applicant today before me is that, actually the respondent No.4 had also signed two cheques. He submitted that this fact could not be pointed out by the learned Magistrate as the applicant's witness was not acquainted with the signatures of respondent Nos. 3 and 4. He submitted that since signing of two cheques by the respondent No.3 was admitted, the Magistrate held him guilty but as there was no evidence that the respondent No.4 had also signed the other two cheques. she was found not guilty. It is submitted that since actually the said two cheques were signed by the respondent No.4, she also should be held guilty of the alleged offences.

7. It cannot be ignored that the respondent No.4 is the wife of the respondent No.3, who is supposed to be the Chairman and Director of the respondent No.2-Company. It also appears

that an admission was given by the applicant's witness that none of the cheques in question had been signed by the respondent No. 4.

8. The respondent Nos.2 and 3 have already been convicted by the learned Magistrate. The Magistrate was right in acquitting the respondent No.4 in view of the evidence that was adduced before him. In the circumstances and since it cannot be said that the order passed by the Magistrate suffers from any error or illegality, it would be futile to grant leave to appeal.

9. Leave refused.

10. The application is rejected.

(A. M. THIPSAY J.)