

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

CRIMINAL APPLICATION NO.:1136 OF 2015

Yashashree Poultry Services,
Proprietor : Devidas Diwanrao Shelke
VERSUS
Y. Malla Reddi, Anantram Reddi

Mr. Vivek V. Tarde, Advocate for Applicant.
Mr. L. B. Palod, Advocate for Respondent.

CORAM : **INDIRA K. JAIN, J.**
DATE : 14th March, 2016.

P.C.:

. This application under Section 378 (4) of the Code of Criminal Procedure is for grant of leave to file appeal against the judgment and order dated 9th December, 2014 passed by the learned Judicial Magistrate First Class, Ahmednagar in S.T.C. No.1261 of 2012 for the offence punishable under Section 138 of the Negotiable Instruments Act.

2 Heard the learned counsel for parties. Perused record.

3 It is the case of Complainant that he is running a business in the name of Yashshree Poultry Services. Accused is running poultry farm at Ahmednagar. There were business relations

between Complainant and Accused. Accused approached the Complainant and demanded poultry material for his poultry farm. He purchased the material on credit. As the amount was outstanding against Accused, he issued cheque of Rs.9,00,000/- on 22nd February, 2012. After cheque was presented to the Bank it was dishonoured. Legal notice was issued. As Accused did not comply with the notice complaint under Section 138 of the Negotiable Instruments Act was filed before the learned Magistrate.

4 Particulars of offence were explained to the Accused. He pleaded not guilty and claimed to be tried. To prove the guilt of Accused, Complainant examined himself and relied upon various documents including the disputed cheque.

5 After considering the evidence adduced by Complainant Trial Court came to the conclusion that since the documents have not been duly proved in accordance with the law reliance cannot be placed on the sole testimony of Complainant and held the Accused not guilty of the offence. Being aggrieved Complainant has come up before this Court and seeks leave to file appeal against the judgment and order of acquittal.

6 With the assistance of the learned counsel for parties this Court has gone through the evidence of Complainant Devidas Shelke. It is stated by him that Accused purchased poultry feed on credit from his firm from time to time and in discharge of said amount he issued cheque which was ultimately dishonoured. In the cross-examination CW-1 Devidas admitted that he is the proprietor of Yashshree Poultry Services. Cheque in question was issued in individual name and not in the name of firm. According to Accused, Complainant Devidas is neither the proprietor nor owner of Yashshree Poultry Services. In this background it was incumbent upon the Complainant to prove that he was the sole proprietor of Yashshree Poultry Services.

7 True, cheque can be issued even in the name of sole proprietor but the fact that Complainant was the sole proprietor of Yashshree Poultry Services was required to be duly proved. No document was produced on record to show that Complainant was the sole proprietor of Yashshree Poultry Services. On the contrary in the cross-examination Complainant admitted that he had not produced copy of licence authorizing him to conduct the business of

Yashshree Poultry Services.

8 So far as Accused is concerned it is the case of Complainant that he was running business in the name of Renuka Poultry farm. No document was produced to show that Accused was running the business in the name of Renuka Poultry farm. In the absence of documentary evidence in respect of both the firms i.e. firm of Complainant and firm of Accused, Trial Court found that it was a material drawback in the case of Complainant.

9 Coming to merits of the case it can be seen that Complainant had produced photocopies of documents on record. He did not bother to prove those documents in accordance with the law. Even extract of account which was computerized was not duly certified as required under Section 65B of the Indian Evidence Act. As documents were not proved and extract was not duly certified Trial Court observed that Complainant could not prove the charge under Section 138 of the Negotiable Instruments Act against the Accused.

10 In the above premise this Court does not find any reason to take a view different than taken by Trial Court. Even

otherwise no purpose would be served if leave is granted. In the result application deserves to be dismissed.

11 Criminal Application No.1136 of 2015 stands dismissed.

[INDIRA K. JAIN, J.]

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