

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1522 OF 2015

Quazi Syed Salahuddin S/o
Quazi Syed Nazirul Hasan
Age : 66 years, Occu.: Advocate,
R/o. Plot No.6, Aabid Housing Society,
Himayat Bagh, Aurangabad .. **Applicant**
(Orig. Complainant)

VERSUS

1] Shaikh Nizam S/o Shaikh Zairuddin
Age : 40 years, Occu.: Business,
R/o. Jai Hind Saw Mill,
Subhash Road, Beed,
Dist. Beed - 431 122 **(Orig. Accused)**

2] The State of Maharashtra .. **Respondents**

Mr. Quazi Syed Salahuddin, applicant in person
Mr. H.V. Tungar, Advocate for respondent no.1
Mr. N.T. Bhagat, A.P.P. for the respondent/State

CORAM : M.T. JOSHI, J.
RESERVED ON : 25/02/2016
PRONOUNCED ON : 10/03/2016

ORDER :

Heard both sides.

2. Aggrieved by the acquittal of the respondent no.1 from the offence punishable under section 138 of the Negotiable Instruments Act by the learned

Judicial Magistrate First Class (2nd Court), Aurangabad in Summary Criminal Case No.1093 of 2007, the original complainant i.e. the present applicant wants to prefer an appeal and, therefore, the present application for leave to file appeal is filed.

3. The case of the applicant/complainant in short, is as under:-

. That in view of the agreement dated 29/12/2006, the applicant has sold the saw mill machinery and other moveables for a consideration of Rs.4,50,000/- to the respondent no.1. Respondent no.1 passed the cheque in question dated 29/12/2006 of the said amount. The complainant/applicant placed the same with the concerned banker on 09/01/2007. The same however was dishonoured for the reason of insufficient funds vide memo dated 12/01/2007. Therefore, the applicant issued notice to respondent no.1 on 25/01/2007 by Registered Post A.D. It was received by the respondent no.1 on 29/01/2007. As the amount was not paid, the complaint came to be filed within limitation.

. According to the respondent no.1, in-fact, he had passed the cheque for Rs.3,50,000/- towards the consideration. However, as a security, the applicant had asked for blank signed cheque. The cheque for Rs.3,50,000/- was honoured. In the circumstances, the applicant was required to return the blank cheque, however, the said cheque is misused. Even the sale deed later-on was executed by the applicant. The notice was not served upon him and, therefore, as according to him, the cheque in question was not issued towards the legally enforceable liability, the complaint deserves to be dismissed.

. The learned Judicial Magistrate First Class took into consideration the admission of the present applicant, that he was unable to state as to how much consideration was fixed for the sale of the machinery. He further admitted that towards the consideration, he received an amount of Rs.50,000/- in cash. His brother, during cross-examination admitted that the cheque in question was not

mentioned in the sale deed and in-fact, the consideration was only Rs.4,00,000/-. He further admitted that out of the said consideration, an amount of Rs.50,000/- was received by the applicant in cash and another cheque for Rs.3,50,000/- was passed by the respondent no.1 to the applicant and the consideration is received. In view of these admissions, the learned Judicial Magistrate First Class came to the conclusion that the cheque in question was not passed towards any legally enforceable liability. Therefore, the acquittal of the respondent no.1 came to be recorded.

4. The applicant in person made oral submissions before me. He also filed written notes of arguments at "X".

. Commenting on the findings of the learned Judicial Magistrate First Class, he submitted that though the civil suit filed by the present applicant was dismissed, the appeal against the same is pending. Further, it would be ridiculous to say that blank cheque was issued towards the security, when

in-fact, the cheque itself would amount to security. Further, admittedly, the respondent no.1 has not issued any instructions to his banker to stop payment under the cheque.

. He further pointed towards the statements made in cross-examination by the respondent no.1. It was further pointed out that the learned Judicial Magistrate First Class has wrongly framed the points for determination, thereby placing the burden of proof on the applicant to prove that the cheque was issued for the debt or liability.

5. Learned counsel for respondent no.1 argued on the line of the reasoning forwarded by the learned Judicial Magistrate First Class.

6. Upon hearing both sides, in my view, the learned Judicial Magistrate First Class has recorded the order of acquittal of the respondent no.1 by taking a reasonable and probable view of the material before him. The applicant himself stated in his cross-examination that he was not aware of the

consideration for sale of the saw mill. He also admitted the passing of another cheque for Rs.3,50,000/- and payment of Rs.50,000/- in cash. His brother admits that the consideration was only Rs.4,00,000/-. In that view of the matter, the cheque could not have been for Rs.4,50,000/-.

7. Though, the findings of the civil Court have not attained finality in view of the pendency of the appeal, the pleadings of the present applicant in the plaint, as found from the copy of the judgment would show that totally different pleadings are made than the allegations in the present complaint.

8. In that view of the matter, grant of leave to file appeal would be an exercise in futility. In the circumstances, the following order:-

9. Criminal Application is hereby dismissed. Leave to file appeal is therefore refused.

[M.T. JOSHI]
JUDGE

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