

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 66 OF 2015

Vyankatrao Vitthalrao Chandolkar .. Applicant

Vs.

Shivaji Namdeo Patil (Jiglekar) and anr. .. Respondents

Ms. Supriya L. Pansambal, Advocate h/f. Mr. V.D. Gunale,
Advocate for the applicant

Mr. Amol S. Gandhi, Advocate h/f Mr. P.V. Mandlik, Sr.
Advocate for respondent no.1

Mr. R.V. Dasalkar, A.P.P. for the respondent/State

CORAM : N.W. SAMBRE, J.

DATE : 30/08/2016

ORAL ORDER :

Heard.

2. In S.C.C. No. 27 of 2007, as the cheque of Rs.1,70,000/- was dishonoured, the learned Judicial Magistrate First Class, Mukhed convicted the respondent accused, by his judgment and order dated October 5, 2009 for the offence punishable under section 138 of the Negotiable Instruments Act, which came to be reversed by the learned Additional Sessions Judge, Kandhar camp at Mukhed, in Criminal Appeal No. 11 of 2009 vide judgment

and order dated March 2, 2015. As such, present Revision.

3. Learned counsel for the applicant would urge that the learned Additional Sessions Judge has ignored the presumption under section 118 and section 139 of the Negotiable Instruments Act. She would then submit that the presumption, as is required to be drawn is qua service of notice particularly section 27 of the General Clauses Act, is required to be taken into account and she would rely on the judgment of the Apex Court in the case of **C.C. Alavi Haji Vs. Palapetty Muhammed and anr. 2007(6) S.C.C. 555.**

4. According to learned counsel for the applicant, the finding recorded by the learned Additional Sessions Judge, that the complainant has failed to establish the legal liability of the cheque amount, is contrary to the principles of presumption provided under the Negotiable Instruments Act.

5. Per contra, Shri Amol Gandhi, learned counsel for respondent no.1 would urge that once the shop was closed in 2005, there was no occasion for issuance of

cheque in 2006 or transaction thereunder. According to him, he has rebutted the presumption by establishing the fact that the shop was closed in the year 2006.

6. *Prima facie*, it is required to be noted that the learned Additional Sessions Judge has ignored the very principle of section 118 and section 138 of the Negotiable Instruments Act while drawing the conclusion of acquittal based on an irrelevant fact.

7. What could be gathered from the findings recorded by the learned Additional Sessions Judge, is that the learned Additional Sessions Judge has shifted the burden on the complainant inspite of above referred provisions, so as to prove that there was order placed for purchase of pipes with the accused. Rather the entire judgment is based on premise that the complainant has failed to discharge his burden, which is otherwise in view of the principles of presumption provided under the Negotiable Instruments Act. In view thereof, in my opinion, the Revision needs to be allowed.

8. The impugned order dated 2/3/2015 passed by the learned Additional Sessions Judge, Kandhar Link Court, Mukhed in Criminal Revision No. 11 of 2009 is hereby set aside. Said appeal needs to be restored to the file of the said learned Additional Sessions Judge, who shall decide the appeal afresh, after considering the very principle of presumption provided under section 118 and 138 of the Negotiable Instruments Act.

9. The parties agree to appear before the said Court on 16th September, 2016 and shall co-operate with the learned Additional Sessions Judge, Khandhar in expeditious disposal of the appeal. The appeal, in any case, shall be disposed of within a period of three (3) months from the date of appearance.

10. Criminal Revision Application is accordingly allowed and disposed of.

[N.W. SAMBRE]
JUDGE

arp/