

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2746 OF 2014

Anil Poonamchand Anecha

VERSUS

1] Raju Sukhdeo Narwade

2] The State of Maharashtra.

...

Advocate for Applicant : S.A.Ambilwade h/f S.B.Gothwal

APP for Respondent: Mr.A.V.Deshmukh,for State.

Adv.Shri Y.D.Kale h/f Mr.R.R.Karpe for R.1.

...

CORAM : V.L.ACHLIYA,J.

DATE : 14/10/2016

PER COURT :-

It is the case of the Applicant/complainant that in discharge of the legal liability i.e. payment of amount due on account of goods purchased, the respondent had issued cheque bearing No.779760 dated 5/4/2010 of Rs.8,28,214/-. When the cheque was presented for its encashment, the same was returned unpaid with an endorsement "**funds insufficient**". Thereafter, the applicant issued statutory notice as contemplated under Section 138 of Negotiable Instruments Act which was duly served upon the respondent/accused. The accused had responded the notice by reply dated 23/4/2010. Since the accused failed to make payment as per the notice dated 20/4/2010, the complainant filed proceeding under Section 138 of Negotiable Instruments Act. On conclusion of the proceeding, the learned Judicial Magistrate First Class, Court No.4, Ahmednagar

dismissed the complaint and acquitted the accused. Being aggrieved the applicant has preferred this application seeking leave to file appeal.

3] Heard the submissions advanced by learned counsel for the applicant and respondent and further perused the record and proceedings.

4] In nutshell, it is the contention of the applicant that the applicant has made out case to succeed in appeal. He has submitted that the respondent/accused has admitted the issuance of the cheque. In this view, it raises the presumption that holder of a cheque received the cheque in discharge of any debt on liability as contemplated under Section 139 of Negotiable Instruments Act. The respondent has failed to lead sufficient evidence in rebuttal to rebut the presumption outstanding debt and same was issued way back in the year 2005 as a security towards various purchases made.

5] I have perused the impugned judgment and order as well as oral and documentary evidence on record. In order to substantiate its case, applicant has produced books of accounts. Perusal of extracts of books of account of the year 2007 to 2010 and the audited statements of account reflects in the list of creditors liability of the respondent is shown as Rs.8,28,214/- by the end of year 2010. The defence of the accused is that cheque in question was issued in the year 2005. Out of nine cheques issued in the year 2005 eight cheques were presented for realisation and same were duly honoured in the year 2005. However, It appears that accused has not stepped into witness box. In this view it is necessary to consider whether the accused rebutted the presumption by leading the evidence in rebuttal. I am therefore, of the view that a case is made

out to grant leave to file appeal. Accordingly, application is allowed in terms of prayer clauses "A" and "B". Appeal be registered. Learned counsel for applicant submits that applicant is ready to get prepare the private paper book. Accordingly, the applicant is permitted to prepare private paper book. On submission of private paper book same be verified by office as per the procedure laid down.

(V.L.ACHLIYA,J.)

umg/