

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.4405 OF 2015

Sunita Ashok Gore,
Age-48 years, Occu:Household,
R/o-Vidyanagar, PO-Sangamner,
Dist-Ahmednagar.

...APPLICANT
(Ori. Complainant)

VERSUS

- 1) Babanrao Yamanaji Ukirde,
Age-48 years, Occu:Business,
R/o-Lavankush Colony,
Malad Road East, Ward No.2,
PO-Sangamner, Dist-Ahmednagar,
- 2) The State of Maharashtra,
Through PI, Sangamner City PS,
Sangamner.

...RESPONDENTS

...
Mr.Vinod Y. Bhide Advocate for Applicant.
Mr.S.K. Shinde Advocate for Respondent No.1.
Mr. V.M. Kagne, A.P.P. for Respondent No.2.
...

CORAM: A.I.S. CHEEMA, J.

DATE : 15TH FEBRUARY, 2016

ORDER :

1. Heard learned counsel for the Applicant-original complainant, learned counsel for Respondent No.1 - original accused and learned A.P.P. for State. Perused record.

2. Learned counsel for the Applicant submits that the Judgment of the trial Court requires to be interfered with as reasonings recorded are not proper. According to the learned counsel, Applicant examined herself and her father to prove the transactions. The counsel submits that Applicant had given hand-loan of Rupees Two Lakh Fifty Thousand to the Respondent No.1 - accused and the cheque issued by Respondent No.1 -accused bounced. Learned counsel submitted that the offence was clearly established. The learned counsel has read out, in the Court, the observations of the trial Court. It is stated that the trial Court appreciated wrongly the evidence

recorded of the Applicant. It is stated that the accused took the defence that he had no transaction with the Applicant but had to give some money of the father of the Applicant. The defence was taken that father of Applicant was doing money lending and against that transaction the accused has signed the cheque, which has been misused by the Applicant to bring about the case. Learned counsel submitted that this defence of the accused is not proved by the Respondent No.1 - accused. Learned counsel relied on the case of **Hiten P. Dalal vs. Bratindranath Banerjee, reported in A.I.R. 2001 Supreme Court 3897** to submit that in the evidence mere explanation is not sufficient to rebut the presumption which gets attracted in view of provisions of Section 138 read with 139 of the Negotiable Instruments Act. According to the learned counsel, the trial Court misdirected itself when it did not consider that the Respondent No.1 - accused had not entered into the witness box to prove that the transaction was

with the father of the Applicant.

3. Against this, learned counsel for Respondent No.1 - accused submitted that there is clear evidence proved on record that cheque was written by the father of the Applicant and the father of the Applicant was also cross-examined in this regard. Learned counsel submitted that the onus on the accused to discharge is not heavy. Accused can even on preponderance of probabilities demonstrate that Complainant is not reliable and that the actual transaction is different and complaint is not maintainable.

4. Perusal of the record shows that huge amount of Rupees Two Lakh Fifty Thousand is said to have been given as hand-loan by the Applicant, who is house wife. Record shows that her husband was earning mere Rupees Twenty Five Thousand per month. It would be big amount for such a person to lend. The trial Court has rightly discussed that

the Applicant was unable to show that as to when accused asked for the said amount and what was the need and that she was unable to prove on record as to from where she got such huge amount of Rupees Two Lakh Fifty Thousand. Trial Court further discussed that in the cheque the figure Rs.50,000/- has been converted into the figure of Rs.2,50,000/-. PW-1 and PW-2 both did not dispute regarding such over-writing. Learned counsel for the Applicant however submits that there is no over-writing in the words amounting to "Rupees Two Lakh Fifty Thousand only" written in the cheque. Further, there is no dispute that ink of contents of cheque vis-a-vis signature is also different.

5. Considered the Judgment relied on and facts of present matter. From the record of the trial Court, I have perused the concerned cheque with the assistance of learned counsel for both sides. The over-writing in the figures is quite apparent. The very fact that over-writing is not got counter-

signed and contents and signature are in different inks is indicative that when the contents of the cheque were written the signature must be already there since before. The signatory may not be available and thus there is no counter-signature. Trial Court discussed evidence and did not believe PWs 1 and 2 for reasons recorded. Looking to the evidence of PW-1 and PW-2, it can be said that the presumption under Section 138, 139 of the Negotiable Instruments Act attached to such cheque was rebutted by Respondent No.1 - accused.

6. Learned counsel for the Applicant has filed copies of certain applications from the record of the trial Court which were filed in the trial Court at Exhibits 40, 41 and 42. It is stated that in the applications Respondent No.1 - accused has accepted that he will make arrangement to pay the amount. Perusal of the applications does not indicate that the Advocate for Respondent No.1 - accused signed these applications. The

Applications are merely to the effect that talk regarding compromise is going on and so time is required. It is on record that Respondent No.1 - accused is illiterate and can only sign. In this view of the matter, at this stage, I do not find it necessary to give any undue importance to these applications which were not relied on to claim proof in trial Court. Accused may have signed assuming that the liability which he may be having of father of the Complainant would go away.

7. Going through the material on record and looking to the reasonings recorded by the trial Court, I do not find that there are grounds to interfere with the acquittal. The view taken by the trial Court is possible view. As such, there is no substance in the Application. The Application is rejected.

[A. I. S. CHEEMA, J.]