IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.4422 OF 2016
WITH
CRIMINAL APPLICATION NO. 4423 OF 2016
IN
CRIMINAL APPLICATION NO. 4422 OF 2016

M/s Shreenath Paper Products Pvt. Ltd.
Director : Ronak Harish Parekh,
Age: 30 years, Occ: Business,
R/o. Shop No. 5-6, Plot No. 136
MASCO Corner, API Road, N-1,
CIDCO, Aurangabad. ..APPLICANT

VERSUS

Sagar Printers,
Proprietor : Shakeel Ahemad,
Age: Major, Occ: Business,
R/o. Opp. Dargah, Mondha Road,
Angoori Baug, Moti Karanja,
Aurangabad, Dist.Aurangabad. ..RESPONDENT

Mr Nitin T. Tribhuwan, Advocate for applicant;

CORAM : N.W. SAMBRE, J.

DATE : 19th SEPTEMBER, 2016

ORAL ORDER :

Heard.

2. Delay of 45 days in moving the application for leave to appeal stands allowed for the reasons

stated therein. Criminal Application No. 4423 of 2016 stands allowed.

2. Criminal Application No. 4422 of 2016 is taken out for hearing at this stage. By the present application, the applicant has prayed for grant of leave to file appeal, pursuant to the provisions of Section 378(4) of the Code fo Criminal Procedure, as the proceedings initiated by the applicant against the respondent for an offence punishable under Section 138 of the Negotiable Instruments Act before learned Judicial Magistrate, First Class, (Court No.4) Aurangabad vide Summary Criminal Case No.9696 of 2014 came to be dismissed, resulting into acquittal of the respondent-accused.

3. Heard Mr. Tribhuwan, learned Counsel for the applicant at length.

4. The cheque in question is for the amount of Rs.1,18,237/-, after dishonour of which, notice under Section 138 of the Negotiable Instruments Act came to be issued on 19th September, 2014, which respondent-accused refused to accept.

5. After complaint came to be initiated, respondent-accused has come out with a defence that the alleged transaction was never materialized as goods were not received and the cheque was issued only towards security, which was misused.

6. In support of the claim, the complainant examined authorized signatory Ronak at Exhibit-12, Bhat at Exhibit-26 and also relied upon ledger account at Exhibit-18, cheque at Exhibit-19, demand notice at Exhibit-20, receipt at Exhibit-21, envelope at Exhibit-22, tax invoice at Exhibit-23 and the bank memo at Exhibit-27.

7. After analyzing the evidence, learned Magistrate acquitted the respondent-accused.

8. Mr. Tribhuwan, learned Counsel for the applicant would strenuously urge that learned Magistrate has failed to appreciate the presumption under Section 118(a) read with Section 139 of the Negotiable Instruments Act. According to him, in view of the presumption, burden shifts on the

respondent-accused to prove that the cheque was not issued for admitted debt and the said burden is not discharged by the accused person. According to him, whether the cheque was issued towards security or not was inappropriately appreciated based on the evidence on record and as such, acquittal is liable to be reversed.

9. Having considered the submissions of learned Counsel, pursuant to the observations made by learned Magistrate, it is required to be noted that learned Magistrate has observed that present applicant has failed to prove that the accused issued cheque in discharge of legally enforceable debt and other liability. So far as the said findings are concerned, the evidence of complainant's witness Ronak is properly appreciated, who has stated that the accused entered into transaction with his firm only once and he does not remember the date of such transaction, which took place some in 2011. No tax invoice was issued by the applicant, however the signature of the customer was taken on delivery

memo. Such delivery memo was not produced by the complainant. It is also brought on record that the accused for 2 to 3 times requested the said witness to return the cheque. Once the accused has come out with the defence that he has not received the goods, it was expected of the complainant to prove the same by producing delivery memo acknowledged by the accused person. Tax invoice at Exhibit-23, which was in electronic form was looked into pursuant to provisions of Section 65(B) of the Evidence Act. The certificate as contemplated under Section 65(B) of the Evidence Act was not produced by the complainant, as such, said tax invoice was not proved.

10. As transaction in question was not proved against which the cheque in question was issued, learned Magistrate observed that the cheque in question was not issued for admitted debt/legally enforceable debt.

11. The said observations, in my opinion, are not found to be incorrect, particularly after

hearing Mr. Tribhuwan, learned Counsel for the applicant, at length. Admittedly, tax invoice at Exhibit-23 was not proved pursuant to Section 65(B) of the Evidence Act, so also, delivery memo containing signature of the respondent-accused so as to prove that goods in transaction were delivered to the respondent-accused. In view of above, transaction in question i.e. issuance of cheque for an admitted debt is not proved by the complainant.

12. In view thereof, no case for grant of leave to file appeal is made out. As such, leave to file an appeal is refused. Criminal Application No. 4422 of 2016 stands dismissed.

(N.W. SAMBRE, J.)

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