

(1)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO.5809 OF 2015
WITH
CRIMINAL APPLICATION NO.5834 OF 2015**

Pralhad s/o Madhav Sarode,
Aged 57 years, Occ. Service,
R/o Vivre Bk., Tal. Raver,
District Jalgaon

..APPLICANT
(Orig. Complainant)

VERSUS

Ramdas s/o Laxman Bairagi,
Age 55 years, Occ. Service,
R/o Shubham Nagar,
Near Filter Plant,
Old Savda Road, Raver,
Tal. Raver, District Jalgaon

..RESPONDENT
(Orig. Accused)

Mr N.B. Patekar, Advocate holding for Mr P.R. Katneshwarkar, Advocate
for applicant;
Mr A.S. Gandhi, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 8th June, 2016

ORAL ORDER :

By these applications under section 378 of the Code of Criminal Procedure, the applicants seek leave to file appeal against acquittal of the respondent – accused for offence punishable under section 138 of the Negotiable Instruments Act.

(2)

2. The case of the applicant – complainant is that the complainant and the accused were working in the same school and accused was in the business of purchasing and developing immovable property and as such had obtained loan of Rs.2 Lack. Towards security, he had furnished two cheques of Rs.1 Lakh each each, which were dishonoured, resulting into lodging of the complaint.

3. In support of his case, the complainant examined himself at Exh.16 and P.W.2 Vasant Rane at Exh.29, before whom, according to the complainant, the respondent – accused had accepted his liability to pay the amount/the disputed cheques/the memos issued by the bank/notices issued under section 138/acknowledgments and reply of notice.

4. The defence that was set up by the respondent – accused was that it was a money lending transaction and an amount of Rs.1 Lakh only was taken as loan and for collateral security, two cheques were issued as demanded by the complainant. It is then alleged that the entire loan amount of Rs.1 Lakh was repaid.

5. Learned Judicial Magistrate First Class, Raver acquitted the respondent – accused of offence punishable under section 138 of the Negotiable Instruments Act, by his judgment and order dated 21st August, 2015. As such, present Applications.

(3)

6. Heard Mr Patekar, learned Counsel appearing on behalf of the applicants. He would urge that the acquittal ordered by the learned Magistrate is not sustainable as the same is contrary to the provisions of sections 113 and 118 of the Negotiable Instruments Act, as according to him, he has ignored the presumption under the statute. He would then, on facts, urge that the repayment of Rs.1,54,000/- was not proved, still the Court has acquitted the accused. According to him, the evidence of P.W.2 Vasant Rane was incorrectly discarded.

7. So as to test the above referred submissions, learned Counsel has taken me through the judgments impugned.

8. It is required to be noted that the applicant has examined himself as P.W.1 in support of his case and Vasant Rane as P.W.2. The respondent – accused has come out with a case of parting of hand loan of Rs.2 Lakhs and issuance of two cheques towards collateral security.

9. The Court below, while dealing with the above referred stand of the applicant has observed that presumption under sections 118 and 139 of the Negotiable Instruments Act can be rebutted by the accused and then proceeded to consider that in absence of the entry of the amount in the income-tax returns/accounts of the complainant, non-production of the accounts or the register maintained by him is sufficient to draw an inference that the accused has rebutted the presumption.

(4)

10. Apart from above, the learned Magistrate has noted that the complainant himself has admitted in cross-examination that the cheques in question were issued by way of security.

11. Learned Magistrate, relying upon the judgments of this Court, in the matter of **Sanjay Mishra vs. M/s Kanishka Kappor @ Nikki & anr.**, reported in **2009 STPL (DC) 988 (Bom.)**, in paragraph 12 and in the matter of **Goa Handicraft, Rural & Small Scale Industries Development Corporation Ltd. vs. M/s Samudra Ropes Pvt. Ltd. & ors.**, reported in **ALL MR (Cri) 2643**, in paragraph 17, has made following observations -

“12. **Sanjay Mishra vs. M/s Kanishka Kappor @ Nikki & anr (2009 STPL (DC) 988 (Bom.))**. In this matter the Hon'ble Bombay High Court has held that “in case of small amount advanced in cash for few days/months, if such is not reflected in income tax return it may not by itself amount to rebuttal of presumption under section 139 of NI Act”. In the said case the Hon'ble Bombay High Court also held that “But in case the large amount advanced by the complainant and is not repayable within few months, the failure to disclose the amount in income-Tax return or Books of Accounts of the complainant may be sufficient to rebut the presumption under section 139 of the said Act”.

“17. **Goa Handicraft, Rural & Small Scale Industries Development Corporation Ltd. vs. M/s Samudra Ropes Pvt. Ltd. & ors., (2005 ALL MR (Cri) 2643)**. In this Judgment the Hon'ble Bombay High Court has held that “cheque given by the accused never meant to be deposited but was referred only a sort of collateral security. Such a

(5)

cheque would not entail a penal liability as envisaged u/s.138 of the NI Act.”

so as to acquit the respondent – accused.

12. The points as are sought to be canvassed by the applicant – complainant, particularly as regards presumption under sections 118 and 139 of the Negotiable Instruments Act, in my opinion, are rightly dealt with by the learned Magistrate. Apart therefrom, the evidence is also in depth scrutinized by the learned Magistrate resulting into ordering acquittal. Thus, no case for grant of leave in both the matters is made out as the two matters are identical in nature and arising out of the same transaction, but for issuance of two cheques. Thus, leave stands refused. Criminal Applications stand rejected.

(N.W. SAMBRE, J.)

amj