

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 6939 OF 2014

Bhaskar S/o Ramchandra Nemade
(died) Through LR Nitin S/o
Bhaskar Nemade

.. Applicant

Vs.

Shree Anil S/o Rajmal Kasat

.. Respondent

Mr. D.B. Shinde, Advocate for the applicant
Mr. Satyajit Bora, Advocate for the respondent

CORAM : N.W. SAMBRE, J.

DATE : 19/09/2016

ORAL ORDER :

Heard.

2. The present application is by the son of the original complainant - Bhaskar, who claimed to have issued a cheque towards the hand-loan, for an amount of Rs.1,91,000/-. It is claimed that against the said loan transaction, the respondent/accused issued a cheque of Rs.95,000/- on August 2, 2007 drawn on Akola Co-op. Bank Ltd. Since the cheque was dishonoured and notice on 20/09/2007 came to be served on respondent/accused and was prosecuted for an offence punishable under section

138 of the Negotiable Instruments Act, the learned Judicial Magistrate First Class, Jalgaon, in S.C.C. No. 4424 of 2007, acquitted the respondent/accused on 11/8/2014. As such, the present application.

3. Learned counsel for the applicant would urge that the Court below has failed to appreciate the evidence of complainant witness namely Nitin (C.W.1), who was examined on power of attorney on behalf of the complainant. According to him, in view of the presumption under section 118 and 119 of the Negotiable Instruments Act, the learned Magistrate ought to have ordered conviction of the accused. He would then urge that since the Court below has failed to appreciate the evidence, this Court should show indulgence and remand the matter back for fresh trial.

4. Learned counsel for the respondent/accused opposed the application on the ground that the original complainant has never entered the witness box. He would then submit that the hand-loan, as has been alleged, was neither proved nor any material documentary evidence is brought on record to demonstrate that the hand-loan transaction took place. According to him, the learned

Magistrate has rightly inferred that the transaction, as is claimed to be the basis for issuance of cheque, is not proved in the absence of any documentary evidence, such as account books etc. and the acquittal of the respondent was rightly ordered. According to him, the application needs to be rejected.

5. At the outset, it is required to be noted that the original complainant – Bhaskar has not entered into the witness box and rather expired during the pendency of the present proceeding.

6. Apart from above, the complainant witness – Nitin has examined himself based on the power of attorney, however, the same was not proved.

7. Apart from above, though two independent witnesses were named to be present at the time of transaction, namely, Dilip Chaudhary and Ramesh Patil, however, for the reasons best known to the original complainant, those witnesses were not examined.

8. The learned Magistrate thereafter has appreciated the evidence and drawn an adverse inference against the complainant as per presumption under section

114 of the Indian Evidence Act. The initiation of another proceeding being S.C.C. No. 3870 of 2007 decided on July 25, 2014, initiated for the same transaction by mother of complainant witness – Nitin, is not in dispute.

9. In view of above, no case is made out. The Application as such fails and is rejected.

[N.W. SAMBRE]
JUDGE

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