

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

CRIMINAL REVISION APPLICATION NO.241 OF 2015

Nanasaheb s/o Vyankatrao Bidve ...Petitioner

VERSUS

Salim s/o Shabbirmiya Tamboli ...Respondent

.....
Shri T.M.Venjane, advocate for petitioner
.....

CORAM : N.W.SAMBRE, J.

DATED : 19th October, 2016

PER COURT :-

Heard learned counsel for the petitioner.

2. Respondent/accused was convicted by
judgment and order, dated 25.9.2013, passed by the
learned Judicial Magistrate, First Class, Latur, in
S.C.C. No.1454 of 2011, for offence punishable
under Section 138 of the Negotiable Instruments
Act.

3. In Criminal Appeal No. 105 of 2013 at the behest of respondent, the learned Additional Sessions Judge, Latur reversed the finding of conviction and granted acquittal. As such present Revision.

4. Shri Venjane, learned counsel would urge that the learned Additional Sessions Judge while granting acquittal has lost sight of the presumption provided under Sections 118 and 139 of the Negotiable Instruments Act. In addition, he invited my attention to the defence raised by the accused, particularly the contradictory defences which formed basis for conviction by the learned Magistrate. The learned counsel would further urge that the evidence of the witnesses i.e. complainant PW 2 Siddarth Sonawane at Exh.36 and the evidence of another witness has been incorrectly discarded.

5. With the assistance of learned counsel for the petitioner, I have perused the impugned orders. The learned Magistrate while dealing with the case

of the complainant has noted that the accused has raised following defences.

(a) denial of hand loan from the complainant.

(b) Exh. 26 blank cheque was obtained by the complainant under pressure.

(c) The cheque in question was issued towards security of hand loan obtained by one Kwajamiya.

(d) DW 2 Jameer obtained loan from the complainant and cheque in question was given towards security for the hand loan.

6. The learned Magistrate proceeded to order the conviction of the petitioner on the ground that there is presumption in favour of the petitioner qua issuance of cheque, he being holder in due course and also discarded the defence of the accused and taken contradictory stand.

7. The learned Sessions Judge evaluated the evidence in detail and noted that no agreement is brought on record so as to demonstrate, as is

claimed by the complainant, that the hand loan was given to the accused and the entries in question are not reflected in the account of the present petitioner. There is contradiction in the evidence of witnesses as regards time, place of payment and the notes which were handed over. The learned Sessions Judge also noticed that there was difference in the ink used for signature and for filling of the cheque in question.

8. If the findings recorded by the Courts below are evaluated in the background of the submissions made by the learned counsel for the petitioner, it is required to be noted that the law permits accused to raise number of defences, even though they are contradictory to each other.

9. Apart from above, though Shri Venjane was right in pointing out that the Court has to look into presumption provided under Sections 118 and 139 of the Negotiable Instruments Act. However, in the present case, it is required to be noted that

rebuttal of such evidence and shifting of burden is provided under the Act, pursuant to which the learned Additional Sessions Judge has delivered an order of acquittal. The learned Additional Sessions Judge on the above referred counts has rightly granted acquittal, as is apparent from the reasons recorded in the order impugned. The learned Additional Sessions Judge, in categorical terms, having reappreciated the evidence in appellate jurisdiction, has noted that it was the duty of the present petitioner to prove that the cheque was issued for an admitted date in response to the stand taken by the accused. Admittedly, the present petitioner is dealing in the lottery business and qua the amount of Rs. One Lakh advanced towards hand loan there is hardly any documentary evidence in favour of the petitioner.

10. In view of above, in my opinion, the order of acquittal, as is recorded by the learned Additional Sessions Judge, does not call for any interference. The Revision, as such, fails.

11. In the circumstances, Criminal Revision
Application stands rejected.

(N.W.SAMBRE, J.)

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