IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 15 OF 2016

M/s. PEE BEE Packaging Industries and anr. ... Applicants

vs.

The State of Maharasthra & anr. ... Respondents

Mr. Anil K. Lulla i/by Mr. S. B. Lambhate, Advocate for the applicants.
Ms. A. Malhotra, Additional Public Prosecutor for the State.

Coram : Smt. R. P. SondurBaldota, J.
Date : 8th February, 2016.

P. C. :

1. This Revision Application is directed against the order dated 12th October, 2015, by which the Sessions Court dismissed Criminal Appeal No.104 of 2013, preferred by the applicants against the order of conviction for the offences punishable under Section 138 of Negotiable Instruments Act, dated 17th January, 2014 passed by the trial Court in C.C. No.1287/SS/2011. Applicant No.1 has been sentenced to pay fine of Rs.20,000/-, to be paid by applicants No.2 and 3 being partners of applicant No.1. In default of payment of fine applicants No.2 and 3 are to suffer simple imprisonment for one month, each. Applicants No.2 and 3,

each, are sentenced to pay fine of Rs.1,90,000/- and in default of fine, to suffer imprisonment of two months each. After recovery of the fine amount of Rs.3,80,000/-, the same is directed to be paid to respondent No.2 by way of compensation.

2. The brief facts of the case noted by the Courts below are that respondent No.2 is a Company registered under the Companies Act dealing with the business of kraft paper and board. Applicant No.1 is the registered Partnership Firm and applicants No.2 and 3 are its partner, who are engaged in the business of manufacturing corrugated box, rolls and sheets etc. Respondent No.2 sold, supplied and delivered kraft papers to applicant No.1 for the total sum of Rs.1,89,337/- under the Invoice No.88/09-10 dated 17th August, 2009. After the supply, it raised debit note in the sum of Rs.8,720/- was towards freight charges. Thus the total amount due from the applicants was of Rs.1,98,657/-. In part discharge of the liability, the applicants issued cheque dated 30th November, 2010 in the sum of Rs.1,00,000/- in favour of respondent No.2. The cheque when deposited, was dishonoured due to insufficient funds. Thereafter, negotiations had taken place between the applicants and respondent No.2, whereby the applicants agreed to pay interest on the delayed payment and asked respondent No.2 to send further debit note. Accordingly,

respondent No.2 raised debit note in the sum of Rs.98,029/- towards interest payable on the late payment. The said debit note was duly served upon the applicants. Thus, under the two debit notes the total amount outstanding against the applicants was of Rs.2,96,086/- for the transaction dated 17th August, 2009. Thereafter, the applicants issued two cheques, both dated 30th March, 2011 in the total sum of Rs.1,96,086/- drawn on Karanataka Bank Ltd., Kalyan signed by applicant No.2 as the Partner of applicant No.1. The cheques when presented for payment, dishonoured on 31st March, 2011 for the reason “funds insufficient”. Respondent No.2 then sent demand notice dated 23rd April, 2011 calling upon the applicants to pay sum of Rs.2,96,086/- within 15 days. The applicants sent reply dated 16th May, 2011 admitting their liability for part of the amount i.e. Rs.1,96,086/-.

3. Respondent No.2 examined one of its Directors in support of the complaint and produced the relevant documents as described at para 3 of the order of the Sessions Court. The applicants examined applicant No.2 in rebuttal. The statements of applicants No.2 and 3 recorded under Section 313 Criminal Procedure Code and the evidence of applicant No.2, in fact, admit the claim of respondent No.2. The facts that stand admitted are

sale and delivery of goods worth Rs.1,89,337/- by respondent No.2 on 17th August, 2009, issuance of the cheques, dishonour of the cheques, issuance of demand notice and reply to demand notice with admission of liability to the extent of Rs.1,96,086/-.

4. Based on the evidence produced the Courts below have given a concurrent finding as regards the liability and guilt of the applicants. The defence of the applicants before the Courts below was threefold. Firstly, that respondent No.2 had issued multiple statutory notices to the applicants. The Courts below have rejected the contention after going through the documents. It is found that the multiple notices referred to by the applicants are nothing but the regular correspondence between the parties and there was only one statutory notice dated 16th May, 2011, which was received by the applicants. This concurrent finding is supported by the material on record. The second defence of the applicants was that the applicants were liable to pay only a sum of Rs.1,96,086/- to respondent No.2, which has been admitted in the reply to the statutory notice and as such they are not liable to pay the amount under the cheque. The complainant had produced the invoices as well as the debit note in evidence. The Courts below have held that these documents clearly show that the applicants are liable to pay the cheque amount. The third contention taken up by the

applicants was that the cheques had been given to respondent No.2 only for accounting purposes. The Courts below have rejected the contention with the obvious finding that there is no such term known to the law i.e. "issuance of cheque for accounting purposes."

5. In my opinion there is no infirmity, whatsoever, in the findings of the Courts below. Hence, the revision application is dismissed. Mr. Lulla, the learned advocate for the applicant then states that applicants No.2 and 3 will surrender and seeks time for the purpose. The applicants No.2 and 3 are given time of two weeks to surrender.

[Smt. R. P. SondurBaldota, J.]