IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.249 OF 2015
(for leave)
in
CRIMINAL APPEAL NO. OF 2014

Mansur Mohammad Momin }
Age 56 yrs, Occu: Business
R/at Shimpi lane, Tasgaon
District Sangli .. Applicant
} (Orig.Complainant)

vs

1. Rajesh Shivaji Ghule }
Age 41 yrs, Occu: Business
R/o Manjari Budruk Taluka Haveli,
District Pune (Orig,Accused No.1)
}
2. The State of Maharashtra .. Respondents

Mr.U.R.Mankapure for Applicant
Ms.Sandhya Mallagir I/b Mr.Anil Joshi
for Respondent

CORAM: G.S.KULKARNI, J
DATE: 7TH JULY, 2016

P.C.

1. The applicant/original complainant by this application under section 378 of the Code of Criminal Procedure Code, 1973 seeks leave to file an appeal against the judgment and order dated 30 August 2014 passed by the learned Judicial Magistrate First Class, Tasgaon, in Summary Criminal Case no.74 of 2010. The respondent no.1 was prosecuted by the applicant under section 138

of the Negotiable Instrument Act, 1888.

2. In nutshell the facts are: Both the applicant and respondent no.1 are in business and had friendly relations. The case of the applicant in the complaint was that the respondent no.1 had offered to the applicant to purchase land bearing Survey no.152/A/4A/1 admeasuring O-H-20-R situate at village Manjari Budruk, Taluka Haweli District Pune, which according to the applicant belonged to the respondent No.1's kin namely Harilal Narayan Ghule. On 16 May 2009 the consideration amount for the sale of the land was fixed at Rs.40,00,000/-. Harilal Narayan Ghule executed an agreement to sale by accepting an earnest amount of Rs.20,00,000/- and agreed to execute a sale deed within four months.It was agreed that the balance consideration of Rs.20,00,000/- would be paid within the said four months. The case of the applicant was that, soon after two months, the respondent no.1 on behalf of Harilal Ghule started demanding the remaining amount and thus the applicant paid him the remaining consideration of Rs.20,00,000/- The respondent no.1 agreed that he would get the

transaction completed within four days. Accordingly, after four days the applicant went to Pune to complete the transaction. When the applicant met the seller (Harilal Ghule) he demanded the balance amount of Rs.20,00,000/-.The applicant was surprised as the applicant had already paid the balance amount to respondent no.1. The seller Harilal Ghule refused to execute the sale deed as he had not received the balance amount of Rs.20,00,000/-. The applicant therefore, demanded Rs.20,00,000/- from the respondent no.1 who avoided to pay the same. The complainant also threatened legal action against respondent no.1. The respondent no.1 therefore, issued two cheques bearing no.420878 and 420879 of Rs.10,00,000/- each drawn on Janseva Co-operative Bank to the complainant. The cheques were dishonoured twice when presented for payment firstly, on 27 August 2009 and 31 August 2009 for “insufficient funds”. On 22 February 2010 the complainant issued a demand notice to the respondent no.1 which was received by the respondent no.1 on 4 March 2010 but the accused failed to pay the amount of cheques within15 days.

3. Thus, the complaint in question came to be filed by the applicant before the Court of Judicial Magistrate, First Class, at Tasgaon. In pursuance of a process issued by the trial Court, respondent no.1 appeared and pleaded not guilty and claimed to be tried. The applicant adduced his evidence on affidavit at Exhibit 30 as also in support of his complaint examined Sadik Mubarak (PW 2) The learned Magistrate recorded statement of respondent no.1 under section 313 of Criminal Procedure Code, 1973. The defence of respondent no.1 was of a total denial and that no transaction had taken place as alleged by the applicant in the complaint. It was the case of the respondent no.1 that the applicant was doing illegal money-lending business and that in the course of the said business the applicant had provided Rs.10,00,000/- to one Natesh Pandurang Shinde resident of Thane. In this transaction the respondent no.1 was a mediator and that respondent no.1 had furnished blank cheques to the applicant as a security for the said money transaction and the case filed by the applicant was a false case and there was no legally recoverable debt from respondent no.1.

4. The learned Magistrate after examining the evidence on record observed that the amount in question was a large sum of money being Rs.20,00,000/-. Further that the applicant had admitted that he had kept an entry of the said amount paid to the respondent no.1 but, the applicant had failed to produce any document before the Court that the said amount came to be paid by him to the respondent no.1. No documentary evidence was adduced by the applicant to show whether the sum of Rs.20,00,000/- was paid in cash or cheque to respondent no.1. It is also observed that the alleged payment of Rs.20,00,000/- was exceeding the limits as permitted under the Income Tax Act and that the said payment was not reflected in the Income tax returns for the relevant year. It was accordingly held that the case as pleaded by the applicant in the complaint could not be proved by the applicant so as to hold that the cheques were issued in discharge of a lawful debt so as to convict respondent no.1. Accordingly, the learned trial Judge rejected the complaint as filed by the applicant.

5. The learned counsel appearing for the applicant in

support of this application would submit that the learned trial Court is in an error in recording the above findings. It is submitted that the findings are based on presumptions and surmises. It is submitted that once the learned Magistrate had come to a conclusion that cheque was issued by respondent no.1 in favour of the applicant then there was a presumption in favour of the applicant that it was in discharge of a lawful debt payable to the applicant. The presumption under section 139 of the Negotiable Instrument Act, 1888 was duly discharged. It is contended that this is a case where the respondent no.1 had clearly failed to rebut the presumption under section 139 of the Act as existed in favour of the applicant.

6. Having heard learned counsel for the applicant and and perusing the impugned judgment and other documents as placed on record,in my opinion, the applicant is not entitled for a leave to file an appeal as the following reasons would indicate.

7. The amount of Rs.20,00,000/- was the balance consideration in respect of a sale transaction of one Harilal Narayan

Ghule the relative of respondent no.1 with the applicant. Respondent no.1 is admittedly not a party to this transaction but is stated to be a mediator. The applicants' case is that under this transaction an amount of Rs.20,00,000/- being the balance amount of sale consideration was paid to respondent no.1 to be handed over to the said Harilal Ghule, which according to the applicant was not paid to Harilal Ghule. Admittedly, there is no registered sale deed in respect of the transaction when the first instalment of Rs.20,00,000/- was paid when the same pertained to the sale of an immovable property. There is no evidence as to on what date and whether the said balance amount of Rs.20,00,000/- was at all paid/handed over to respondent no.1, to be paid to the said Harilal Narayan Ghule. In the cross-examination, the applicant has stated that on 22 July 2009 he came to know that the respondent no.1 had cheated him. Admittedly, no police complaint was lodged as regards cheating of such large amount. Appreciating the evidence on record the learned Magistrate has also recorded a finding that when the applicant claimed that the said amount of Rs.20,00,000/- was deposited with the respondent no.1 the applicant had not intimated the said fact to the seller-Harilal as a prudent buyer would do. Further there is a credence to the case of respondent no.1 that the applicant is in money lending business and there was a transaction of money being lent to Natesh Shinde as the applicant has admitted that he was acquainted with one Natesh Shinde. In this regard it has come in evidence that the applicant had paid advance of Rs.10,00,000/- for some site development to Natesh. The applicant was attempting to recover the said money by selling Innova car of Natesh Shinde on 28 June 2013 and to this effect Crime No.122/2013 was registered against the applicant at Deccan Gymkhana police station under section 384 of the Indian Penal Code, which is categorically admitted by the applicant. The applicant has also admitted that he was arrested in the said crime. However, the fact remains that the applicant miserably failed to prove his case as pleaded in the complaint. The applicant's complaint cannot succeed if the same is not proved as required under the parameters of section 138 of the Negotiable Instrument Act.

8. Considering the evidence which has come on record before the trial Court I see no perversity in the findings as recorded by

the trial Court in coming to a conclusion that there was no legally enforceable debt or liability to the tune of Rs.20,00,000/- payable to the applicant by the respondent no.1 under the cheques in question. This is a clear case where the allegations as made by the applicant/complainant in the complaint could not be proved by the applicant. As regards presumption under section 139 of the Negotiable Instrument Act, the same has been properly rebutted as can be seen from the evidence. Also there is no perversity in the findings as recorded by the learned trial Magistrate that an amount of Rs.5,00,000/- was paid by the applicant to get rid of the criminal complaint and on the contrary payment of Rs.5,00,000/- cannot by itself be regarded as a proof of existence of a legally recoverable debt or a liability as asserted by the applicant in the complaint.

9. In view of the above discussion, the application is devoid of merit and is accordingly rejected. No order as to costs.

(G.S.Kulkarni, J.)