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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.430 OF 2013.

Prashant Deepak Oswal,	]	
Proprietor of M/s Rajat Metal Industries	]	... <u>Applicant.</u>
Age: 43 years, Occn. Business	]	(Original
r/o 1672, Shukrawar Peth	]	Accused)
Pune.	]	

V/s.

1. Mahesh Sahakari Bank Ltd.	]	
having its head office at	]	
372/373/374, Market Yard	]	... <u>Respondents.</u>
Gultekadi, Pune - 37.	]	(respondent No.1
	]	original
2. The State of Maharashtra	]	complainant)

Mrs. Prabha Uday Badadare, for the applicant.

Mr. Nikhil Rajani, I/by M/s V. Deshpande & Co. for Respondent No.1.

Smt. V.R. Bhonsale, APP for the State.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 13th JANUARY, 2016.

ORAL ORDER : [Per: Dr. Shalini Phansalkar Joshi, J.]

1. By this revision, applicant, who is an original accused takes an exception to the concurrent finding and order of the Judicial Magistrate First Class in S.C.C.No.23640 of 2007 dated 7.9.2011 and of

Additional Sessions Judge, Pune, in Criminal Appeal No.420 of 2011 dated 15.7.2013, thereby convicting him, for the offence punishable under Section 138 of the negotiable Instruments Act and sentencing him to pay fine of Rs.1,50,000/- in default to suffer simple imprisonment for six months.

2. The only ground which is taken in this revision by learned counsel for the applicant to challenge the concurrent findings and order of his conviction is to the effect that the statutory demand notice which is mandatory in the case, was not served by the respondent before prosecution was launched against him. To substantiate this submission, reliance is placed on the fact that RPAD receipt of the demand notice was not produced and there is admission given by the respondent in his cross examination that notice was not sent on the address of the applicant as mentioned in Exh.15.

3. However, the perusal of the judgment of trial Court reveals that in paragraph No.20, the trial Court has given detailed reasoning on his point. Perusal of letter Exh.15, it reflects the address of the applicant mentioned as “*M/s Rajat Metal Industries, Proprietor Prashant Deepak Oswal, 1672, Shukrawar Peth, Pune-2*” and the trial Court, found that respondent has sent notice Exh.18 on the same address and the postal

acknowledgement receipt Exh.19 also bear the same address which was mentioned in the letter Exh.15. The trial Court, further found that summons and warrants which were issued to the applicant were served on the address on which demand notice was sent. In view thereof, there is hardly any substance in the contention of the applicant that demand notice was not duly served on him.

4. Further contention raised by learned counsel for petitioner is that there was no legal liability existing as alleged when cheque was issued. In this respect, attention is drawn to the fact that the property of the applicant was auctioned and certain amount was recovered. It is urged that the details of amount recovered and the amount which remained in balance for issuance of said cheque are not given in the complaint. In this respect also evidence on record proves that recovery certificate was issued in the year 2002 itself for amount of Rs.8 lacs and towards part payment of the said liability, the petitioner has issued disputed cheque of Rs.1,00,000/-. In such circumstances, this contention that there was no legal liability also can hardly be accepted.

5. To sum up, therefore, both the contentions raised by learned counsel for petitioner to challenge the impugned order of conviction and sentence no more survive. The judgment of trial Court also is detailed

one which shows that all the requirements of section 138 of Negotiable Instruments Act were satisfied. The said judgment and order of the trial Court is also confirmed by the Sessions Court giving once again the detailed reasoning in this respect. In the absence of anything contrary brought on record, absolutely no ground is made out to interfere in the concurrent findings of trial Court and the Appellate Court. The Revision, therefore, stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

C E R T I F I C A T E

Certified to be true and correct copy of the
original signed oral order.