

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

CRIMINAL APPLICATION NO. 308 OF 2016

Rajendra S/o Baburao Kakde .. Applicant

Versus

Tulsiram S/o Lahu Patil & Anr. .. Respondents

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Mr Sanjay A. Nandure, Advocate for the applicant
Mr R. G. Ghode, Advocate for respondent No. 1
Mr P. N. Kutti, APP for respondent No. 2
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**CORAM : VL. ACHLIYA, J.
DATED : 24.01.2017.**

PER COURT :

1. The applicant has filed this application seeking leave to file appeal against the Judgment and Order dt. 05.12.2015 passed by 14th Jt. Civil Judge Junior Division, Aurangabad in Summary Criminal Case No. 8794 of 2014. By the impugned Judgment & Order, the trial Court has acquitted the respondent-accused for offence u/s 138 of the Negotiable Instruments Act & dismissed the complaint.

2. Learned counsel for the applicant submits that, the reasons and findings recorded by the trial Court are perverse and not sustainable in law. He submits that, the complainant has adduced sufficient evidence to prove that the cheque in question was issued in discharge of legal liability. He submits that, the complainant had placed an order with accused for supply of two tractor trolleys. The complainant had paid Rs. 2,00,000/- (Rupees Two Lakhs) as an advance to accused. However, the accused has not supplied the trolleys within the stipulated time. Therefore, the complainant insisted for refund of the amount. At the insistence of the complainant to refund the amount taken as advanced, the cheque in question was issued by accused. When the cheque was presented for its encashment, the cheque was returned with remark "Insufficient funds". Therefore, the complainant served upon him notice u/s 138 of the Negotiable Instruments Act. The accused though responded to notice but denied the liability. Hence the complaint came to be filed against accused. By referring the pleadings and evidence adduced, the learned counsel submits that the complainant has proved that the cheque was issued by the accused in discharge of legal liability. However, the accused failed to rebut the presumption.

3. On the other hand, the learned counsel for the respondent No. 1 has supported the impugned Judgment & Order. He submits that, in the cross-examination the complainant has admitted that he himself deals in the business of manufacture of trolleys. It is brought on record that at the relevant time, the complainant was not owner of any tractor. He submits that, cheque in question was misused. The accused has adduced cogent and convincing evidence to establish that the cheque in question was not issued to the complainant towards discharge of legal liability or legal dues and further proved that the complainant has misused the blank cheque signed by him & lying with complainant.

4. In order to appreciate the submissions advanced, I have perused the record & proceedings of the case. On due consideration of the submissions advanced in the light of the pleadings, oral and documentary evidence on record, I am of the view that the reasons and findings recorded by the trial Court are based upon due appreciation of oral and documentary evidence on record. The reasons and findings recorded by the trial Court are quite consistent with the evidence on record. In the cross-examination, the complainant has admitted that at the relevant time, neither the complainant

nor any member of his family were owner of the tractor. In cross-examination, it has been brought on record that the complainant had obtained the license in his own name to manufacture the tractor trolleys and constituted business firm known as "Tirupati Trailors" dealing with manufacture of tractor trolley. The accused had taken a specific defence that he had started business in joint venture with the complainant in Shendra MIDC and the accused was looking after the responsibility of production and the complainant was looking after the responsibility of marketing. They sold the products manufactured by them on credit to various persons. Since, they could not recover the outstanding dues from the persons to whom the products were sold, they were required to stop the business. He has specifically deposed that, the complainant had misused the blank cheques bearing signatures of accused lying with him, while doing said business.

5. In the light of the admissions brought on record that at the relevant time the complainant was not owner of any tractor and the complainant himself was doing the business of manufacturing of tractor trolley, it is difficult to believe that the complainant had placed an order of supply of two trolleys and gave advance of Rs. 2,00,000/- to accused. In this

view, the view taken by the trial Court cannot be termed as perverse or based upon misreading of evidence. In my view, the reasons and findings recorded by the trial Court are quite consistent with the evidence on record and view taken by the trial Court is the possible view in the matter. I am, therefore, of the view that no case is made out to grant leave to file an appeal against impugned Judgment & Order. I am therefore inclined to entertain the application. Accordingly, the application is rejected. Record & Proceeding be sent back to the trial Court.

[V. L. ACHLIYA]
JUDGE

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