IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1366 OF 2016

DEVGIRI NAGRI SAHAKARI PATH-SANSTHA
MARYADIT AURANGABAD THROUGH ANIL S/O KACHRU SULTANE
VERSUS
KISAN S/O. BANSILAL SALAMPURE
...
Advocate for Applicant : Gaikwad Satish A.
Advocate for Respondent : Shinde Chandrakant K.
...

CORAM : V.L.ACHLIYA,J.
DATE : 17/02/2017

PER COURT :-

This application is filed seeking leave to file appeal against the judgment and order dated 7/1/2016 in Summary Criminal Case No.440/2011 passed by Judicial Magistrate, First Class, Aurangabad.

2] Heard learned counsel for the applicant and respondent and further perused the record and proceeding of the trial Court.

3] The complainant had filed complaint under Section 138 of Negotiable Instruments Act alleging therein that the accused had obtained the loan of Rs.20,000/- on 21/10/1999 (wrongly typed as 21/10/2009). The loan amount was not repaid as agreed. As on 6/9/2010, an amount of Rs.24348/- was due against the accused. On account of payment of that amount, the accused had issued cheque of Rs.24,348/- drawn and payable from his account with Rupee Cooperative Bank Aurangabad. When said cheque was presented for its realisation, same was returned alongwith communication dated 30/11/2009. It was informed that cheque could not be realised due to reason that drawer has “Not arranged” to honour the cheque. On 18/12/2010, the complainant issued statutory notice as contemplated under Section 138 of Negotiable Instruments Act. Since the accused has failed to comply with the notice, the complainant has filed complaint.

4] On conclusion of trial the learned Magistrate has dismissed the complaint and acquitted accused by observing that the complainant has failed to prove that the cheque in question was issued in discharge of legal liability or dues. The complaint is also dismissed on the ground that the notice as alleged to be issued was not as per Section 138(b) of Negotiable Instruments Act.

5] The learned counsel for the applicant strenuously contended that in the case in hand, the fact is not in dispute that the loan of Rs.20,000/- was advanced. The accused has not disputed the signature on the cheque and issuance of cheque. In this background the learned counsel argued that the complainant has discharged the initial onus to establish that the cheque was issued in discharge of legal liability of dues. The accused failed to adduce evidence in rebuttal. He further argued that the reasons and findings recorded by the trial Court are erroneous and there is arguable case to be considered in appeal.

6] On the other hand, the learned counsel for the respondent urged that there is absolutely no perversity in the judgment and order passed by trial Court. The reasons and findings recorded by trial Court are based upon due appreciation of evidence on record. The Witness for the complainant has admitted the certain payments adjusted by accused. No extract of account placed on record to show that on the date of issuance of the cheque an amount of Rs.24348/- was due against the complainant. He therefore, submits that there is absolutely no case made out to be considered in appeal.

7] In order to appreciate the submissions advanced, I have perused the record and proceedings. The fact is not in dispute that the loan in question was advanced in the year 1999. There is nothing on record to show that on the date of issuance of cheque dated 6/9/2010, Rs.24348/- was due against accused. It is pertinent to note that the complainant has produced number of documents on record except the extract of account. In this view, the trial Court has rightly drawn adverse inference against the complainant in not producing the extract of account. In the cross examination, the witness for the complainant has admitted that the loan advanced in the year 1999 was to be repayable within two years. Although the witness has deposed that extract of account has been filed but no such extract of account found to be filed on record. He has admitted in the cross examination that on 8/3/2001, Rs.15082/- were credited in the loan account of the accused. Although he denied the suggestion that Rs.5392/- was credited in the loan account from the account of the wife and son of accused but admitted the correctness of the entries in the saving account, the copy of which he was confronted during the cross examination. Thus the view taken by the trial Court that the complainant has failed to establish that on the date of issuance of the cheque amount of Rs.24,348/- was due against the complainant cannot said to be erroneous. The judgment and order passed by trial Court is well reasoned and based upon due appreciation of evidence on record. The reasons and findings recorded by the trial Court are fully in consonance of the evidence on record. In this view, no case is made out to entertain the application seeking leave to file appeal. Accordingly, the application is rejected. Record and proceeding be sent back to trial Court.

(V.L.ACHLIYA,J.)

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