

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

CRIMINAL APPLICATION NO. 3114 OF 2015

DILIP S/O JAGANNATH GHOLAP

VERSUS

VITHAL SADHU SATPUTE

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Mr. N.L.Jadhav, Advocate for Applicant.

Mr. S.S.Thombre, Advocate for R – 1.

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CORAM : V.L.ACHLIYA, J.

DATE : 10th JANUARY, 2017

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ORAL ORDER :

1. The applicant has filed this application seeking leave to file Appeal against the Judgment and Order dated 21/11/2014 delivered in S.C.C. No. 112/2013 by the Judicial Magistrate First Class, Washi, district Osmanabad. By the impugned Judgment, the learned Magistrate has dismissed

criminal Complaint filed u/s 138 of the Negotiable Instruments Act and acquitted the accused.

2. Heard the learned counsels for the applicant and the respondent and perused the impugned Judgment.

3. In nut-shell, it is the contention of the learned counsel for the applicant that the respondent has not disputed the issuance of cheque with his signature. In this view, the presumption exist in favour of the complainant that the cheque in question was issued in discharge of legal liability. According to the learned counsel for the applicant, the respondent has failed to adduce sufficient evidence to rebut the presumption u/s 139 of the Negotiable Instruments Act.

4. On the other hand, learned counsel for the respondent has invited my attention to the reasons and findings recorded by the trial Court and submitted that the accused has stepped into witness box and

adduced sufficient evidence to rebut the presumption.

5. In order to appreciate the submissions advanced, I have perused the reasons and findings recorded by the trial Court. In nut-shell, the complainant has approached the Court with the case that he has sold tractor owned by him to the respondent for sum of ₹ 5,90,000/- [Rupees Five Lakhs Ninety Thousand]. Out of the said amount, the amount of ₹ 2,50,000/- [Rupees Two Lakhs Fifty Thousand] was due against the accused. Towards payment of said amount, the accused had issued the cheque in question which was dishonoured for want of requisite funds in his account. In spite of statutory notice u/s 138 of the Negotiable Instruments Act served upon the accused, the amount was not paid and thereby the accused has committed the offence punishable u/s 138 of the Negotiable Instruments Act. As against this, it is the contention of the accused that the cheque in question was not issued towards any legal liability, but it was blank cheque obtained by the complainant towards different transaction. He

has taken a specific stand that the tractor in question was purchased in the year 2008. He has paid the entire amount way back in the year 2008. In order to substantiate the fact and rebut the presumption, the complainant deposed on oath that the accused has produced extract of account showing various payments made towards sale consideration of the tractor purchased by him. As against sale consideration of ₹ 5,75,000/- [Rupees Five Lakhs Seventy Five Thousand] which includes insurance amount, various payments were made during the year 2008. Last entry in the account book shows that ₹ 30,000/- [Rupees Thirty Thousand] was credited in the account of the complainant on 04/11/2008 and ₹ 20,000/- [Rupees Twenty Thousand] was only due in the year 2008. The amount tendered by accused/respondent has been admitted by complainant. In this view, the trial Court has rightly observed that it is difficult to believe that the accused had issued the cheque of ₹ 2,50,000/- [Rupees Two Lakhs Fifty Thousand] in the year 2013. On reaching to the conclusion that the complainant has failed to

establish that the cheque in question was issued towards the discharge of legal liability or dues dismissed the complaint and acquitted the accused. In this view, the reasons and findings recorded by the trial Court can not be termed as erroneous and not sustainable in law. On the contrary, the Judgment and Order passed by the trial Court is well reasoned and calls for no interference.

6. In this view, I am not inclined to entertain the application seeking leave to file Appeal. Accordingly, the application is rejected.

[V.L.ACHLIYA, J.]