IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.11 OF 2017

Mahendra Nandram Pardeshi …Applicant
(complainant)
Versus
Atin Mahadev Suryawanshi & Anr. ...Respondents
…..
Mr. P.R. Arjunwadkar for the Applicant.
Mr. H.J. Dedhia, APP for the Respondent No.2-State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 13th DECEMBER, 2017.

P.C.:-

The Applicant herein, who was the complainant in Summary Criminal Case No.0409459 of 2013(hereinafter referred to as the 'complainant') has sought leave to challenge the judgment dated 19th November, 2016 whereby the learned 22nd Judicial Magistrate, First Class, Pune, has acquitted the Respondent No.1 (hereinafter referred to as 'accused') of offence punishable under Section 138 of the Negotiable Instruments Act.

2. Mr. Arjunwadkar, the learned counsel for the complainant has submitted that the accused has not disputed his signature on the

cheque. He has submitted that the presumption in terms of Sections 118 (a) and 139 of the Negotiable Instruments Act is in favour of the complainant and that the accused has not rebutted the said presumption. In this context he has relied upon the judgment of the Apex Court in ***Rangappa Vs. Sri Mohan 2010 (2) Bom.C.R.(Cri) 795***. The learned counsel for the complainant has further contended that the learned Magistrate has not taken into consideration the fact that the accused has failed to rebut the presumption and has erred in acquitting the accused.

3. The learned counsel for the complainant has further submitted that the subject cheque includes the money, which was given to the accused by Nilima Pawar. He has submitted that the complainant herein had handed over the said money on behalf of the said Nilima Pawar and therefore, the complainant is the holder in due course and therefore, entitle to recover money from the accused. He has stated that defence of the accused that his brother had stolen the cheque and given it to the complainant is totally belied by the testimony of PW2, brother of the accused. He claims that the findings recorded by the learned Magistrate are not based on record and the same are illegal and perverse.

4. I have perused the record and considered the submissions advanced by the learned counsel for the Applicant.

5. The Applicant had filed a complaint under Section 138 of the NI Act for dishonour of cheque for Rs.17,50,000/-. The Respondent has not disputed his signature on the cheque. Hence, the presumptions under Section 118(a) and 139 of the NI Act are in the favour of the Applicant-complainant. Suffice it to say that these presumptions are rebuttable by preponderance of probabilities. Hence, the short question which falls for determination is whether the Respondent has rebutted the presumption arising under Sections 118(a) and 139 of the NI Act.

6. According to the Applicant, the Respondent had issued the cheque towards repayment of loan amount of Rs.17,50,000/-. It is the case of the complainant that he had paid to the Respondent-accused a sum of Rs.7,50,000/- during the period between March 2009 to October-2010. The Respondent-accused had not repaid the said loan amount till 2011, despite which he once again approached the Applicant-complainant in the month of July 2011 and requested for

loan of Rs.10,00,000/-. The Applicant-complainant has alleged that on 4.7.2011 he paid Rs.4,00,000/- to the Respondent-accused from his personal account and Rs.6,00,000/- from the account of Nilima Pawar. The Applicant-complainant claims that the Respondent-accused had assured that he would repay the loan amount within a period of one month. On the same day he handed over an undated cheque for Rs.17,50,000/- towards repayment of the said loan amount. The Respondent-accused did not repay the said amount within a period of one month as assured. Hence, on 1.3.2013 the Applicant-complainant presented the subject cheque to the Bank by inserting the date as well as the name of the holder of the cheque. Said cheque was dishonoured with a remark that the account was closed.

7. Thus, according to the complainant the cheque includes the loan of Rs.7,50,000/- advanced between March-2009 to October-2010, loan of Rs.6,00,000/- given to the Respondent by Nilima Pawar and loan of Rs.4,00,000/- given by the Applicant from his personal account. It is pertinent to note that the Applicant has not been able to specify the dates on which he advanced the loan of Rs.7,50,000/-. There is no written record regarding the said payment of loan. The Applicant-complainant, who is a police officer and who is stated to be suspended

has not shown his bank entries or the details of the account from which he had withdrawn the said amount. There is nothing to show that the Applicant had demanded repayment of the said loan amount or had taken any action, though the Respondent-accused had allegedly not repaid the said loan amount for over a period of two years. Despite the non-payment of previous loan, the Applicant claims to have paid to the Respondent-accused further loan of Rs.10,00,000/-. Out of the said Rs.10,00,000/- a sum of Rs.6,00,000/- was allegedly paid by Nilima Pawar. The Respondent-accused was therefore not liable to pay the said amount of Rs.6,00,000/- to the Applicant-complainant, moreso when there is nothing on record to show that said Nilima Pawar had authorised the Applicant-complainant to receive the said loan amount on her behalf.

8. It is also pertinent to note that the Applicant-complainant claims that the Respondent-accused had issued the cheque on the date he had availed the loan i.e. on 4.7.2011, with an assurance to repay the loan amount within one month from the said date. The said loan amount was therefore, repayable in the month of August-2011. Though the Respondent-accused had not repaid the loan within one month as assured, the Applicant-complainant did not act for over a

period of one and a half year. The Applicant-complainant has not explained as to what had transpired between them from August-2011 to March-2013. He deposited the said cheque only after the Respondent-accused had closed the account.

9. The Applicant-complainant has also placed on record the subject cheque as well as a photocopy of the said signed cheque before inserting the date and the name of the holder. A plain perusal of these cheques show that there is no difference in the handwriting with respect to the name of the holder and the date vis-à-vis the amount in words and figures. This fact indicates that the entire contents were written by one and same person and this negates the case of the Applicant-complainant that the amount in words and figures were written by the Respondent-accused and that he had only inserted the date and name. All these aforesaid circumstances, which have been brought on record indicate that the Applicant-complainant has not disclosed the true facts. There are glaring loopholes in the case of the Applicant-complainant. Applying the ratio in the case of ***Vijay Vs. Laxman Criminal Appeal 261 of 2013,*** in my considered view the learned Judge was perfectly right in holding that the Respondent-accused had discharged the burden of rebutting the presumption by

preponderance of probabilities. The findings of the learned Trial Judge are based on the evidence on record. There is no illegality or infirmity. Hence, this is not a case, which warrants grant of leave to appeal.

10. Under the circumstance, the application is dismissed.

(ANUJA PRABHUDESSAI, J.)