

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION (ALP) NO.120 OF 2017

Bhushan Jagannath Koli, The Prop. Of	...Applicant
Sai Shraddha Transport	
Versus	
State of Maharashtra & Anr.	...Respondents

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Mr. siddiqui v. Munnuwar, Advocate for the Applicant.
Mr. Shahajirao Shinde, APP for the Respondent-State.
Mr. Madhav J. Jamdar, for the Respondent No.1.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 21st AUGUST, 2017.

P.C.:-

1. The Applicant herein, who was the complainant in Summary Criminal Case No.4330/2012 filed under Section 138 of the Negotiable Instrument Act, has sought leave to challenge the order of acquittal dated 9.12.2016 passed by the learned Additional Sessions Judge 07, Thane in Criminal Appeal No.245/2014.
2. Heard the learned Counsels for the Applicant and Respondent No.1 and the learned APP for the State. I have perused the records and considered the submissions advanced by the Counsel for the parties.
3. The record reveals that the Applicant herein had filed a complaint for the offence punishable under Section 138 of the Negotiable Instrument Act in respect of a cheque dated 10.5.2012 for Rs.5,50,000/- allegedly issued by the Respondent towards discharge of debt and liability. The

learned Magistrate held the Respondent guilty of the offence punishable under Section 138 of the Negotiable Instrument Act and had sentenced to undergo Simple Imprisonment for 2 months and to pay compensation of Rs.5,80,000/- in default to undergo Simple Imprisonment for 1 month.

4. The Respondent/Accused challenged the said order of conviction and sentence in Criminal Appeal No.245/2014. The Appellate Court by its judgment has allowed the Appeal and set aside the judgment and order dated 11.09.2014 passed in Summary Criminal Case No.4330/2012.

5. Being aggrieved by the said order the Applicant has sought leave to challenge the said order of the Appellate Court.

6. A perusal of the said judgment dated 9.12.2016 in Criminal Appeal No.245/2014 reveals that the Appellate Court has rendered a finding that the Applicant herein has failed to establish that he is a proprietor of the Sai Shraddha Transport in whose favour the subject cheque was issued.

7. The learned Counsel for the Applicant has drawn my attention to the statutory notice as well as reply given by the Applicant/Accused. A perusal of the said notice clearly indicates that the said notice was issued by the Applicant as a proprietor of said Sai Shraddha Transport. The Applicant/Accused had not disputed the said statement in the reply to the statutory notice. The complaint was also filed as a proprietor of Sai Shraddha Transport.

8. It is also to be noted that the learned Magistrate had held that the status of the Applicant being a proprietor of Sai Shraddha Transport was not in dispute. The learned Magistrate, upon appreciating the evidence had held that the Applicant had established the essential ingredients of the offence. The Appellate Court has disturbed the findings of the Trial Court and has held that the Applicant/Accused has rebutted the presumption. The findings of the Appellate Court need to be tested. The Applicant has raised arguable points which are required to be decided on merits. Hence the following order:

ORDER

- (i) The Criminal Application is allowed in terms of prayer Clause (a);
- (ii) Leave is granted to challenge the order dated 9.12.2016 passed by the learned Additional Sessions Judge, Thane in Criminal Appeal No.245/2014.
- (iii) Necessary amendment be carried out. Registry to register the Appeal.
- (iv) The Respondent shall furnish bail bonds of Rs.15,000/-(Rs. Fifteen Thousand only) with one surety to the like amount to the satisfaction of the learned Judicial Magistrate First Class, Vashi;
- (v) The Respondent shall furnish his contact number and permanent as well as local address, if any, and shall intimate change of address, if any, to the concerned Court;

(ANUJA PRABHUDESSAI, J.)