IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.107 OF 2016

PADMA KAMLESH SHADIJA)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA & ANR.)...RESPONDENTS

Ms.Sandhya Nanavare i/b. Mr.M.Janardhanan, Advocate for the Applicant.

Mr.Vinod Chate, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 29th AUGUST 2017

P.C. :

1 By this application, the applicant / original complainant is seeking leave to challenge the judgment and order dated 5th October 2015 passed by the learned 4th Joint C.J.J.D & J.M.F.C., Ulhas Nagar, thereby acquitting respondent no.2 herein / original accused of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

2 Heard the learned advocate appearing for the applicant / original complainant at sufficient length. She took me through evidence of complainant Padma as well as evidence of PW2 Ghanshyam Kukreja and submitted that the offence alleged against the respondent no.2 is made out by evidence adduced by the applicant / original complainant and therefore, the learned trial court erred in acquitting the respondent no.2 of the offence alleged against him.

3 I have carefully considered the submissions so advanced and also perused copy of deposition of complainant Padma. I have also perused deposition of PW2 Ghanshyam Kukreja apart from the other documentary evidence made available.

4 According to the case of the complainant, the respondent no.2 / accused is neighbour of the applicant / original complainant and they were having cordial relations with each other. In January 2013, respondent no.2 / accused being in

urgent need of money, approached to the present applicant / original complainant. At that time, wife of the respondent no.2 / accused also accompanied him. Therefore, the applicant / original complainant had advanced friendly loan of Rs.10,75,000/- to the respondent no.2 / accused. For repayment of that friendly loan, the respondent no.2 / accused is said to have issued the cheque for that amount drawn on Bank of Baroda dated 25th July 2013. However, ultimately that cheque could not be honoured because payment was stopped by the respondent no.2 / accused. This has resulted in issuance of statutory notice and subsequently the complaint for the offence punishable under Section 138 of the Negotiable Instruments Act.

5 It is seen from the evidence of present applicant / original complainant that she was merely earning an amount of Rs.5,000/- to Rs.6,000/- per month. It is seen from her cross-examination that she was having an amount of Rs.6.50 lakh which she had procured by selling some jewellery as well as available cash balance with her. As per her version, that amount was in the

bank account. However, perusal of passbook at Exhibit 34 had revealed that the applicant / original complainant was not having that much amount to her credit. In January 2013, she was not having more than Rs.25,000/- to her credit in the bank account. The applicant / original complainant had deposed that she procured rest of Rs.4.50 lakh by selling of shop, but no trustworthy documentary evidence is adduced on that count. Document of title of the shop is also not placed on record. On that count the applicant / original complainant relied on evidence of PW2 Ghanshyam Kukreja. However, there is no explanation as to why the complaint is bereft of the pleading that the complainant was owner of the shop along with witness Ghanshyam Kukreja. Evidence of witness Ghanshyam Kukreja appears to be coming on record by way of omission as there is no reference to him in the complaint though he is stated to be the fund provider as well as the witness to the transaction. His evidence, as such, is wholly unreliable.

6 To crown this all, it is apparent from the evidence of the applicant / original complainant that she was modulating her version time and again to suit her case. Her letters at Exhibits 27 and 28 are reflecting the fact that as there was no male member in her family, the applicant / original complainant had entrusted the said amount to the respondent no.2 / accused. In the criminal case, the applicant / original complainant had filed an affidavit, certified copy of which was at Exhibit 47 with the trial court. In the said affidavit also, the applicant / original complainant had stated that the amount of Rs.10.75 lakh was entrusted to the respondent no.2 / accused for safe custody. Thus, this evidence coming on record from cross-examination is shaking substratum of the case sought to be made out against the respondent no.2 / accused.

7 With such quality of evidence, it is not possible to infer that the trial court erred in holding that the applicant / original complainant has failed to establish legal liability.

8 In the result, no case for grant of leave is made out. The application is, therefore, rejected.

(A. M. BADAR, J.)