IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.278 OF 2017
WITH
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WITH
CRIMINAL APPLICATION NO.282 OF 2017
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CRIMINAL APPLICATION NO.284 OF 2017
WITH
CRIMINAL APPLICATION NO.285 OF 2017
WITH
CRIMINAL APPLICATION NO.286 OF 2017

Waqar Mushir Khan …Applicant
Versus
Birendranath Amarnath Tiwari and
Anr. ...Respondents

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Ms Sangeeta S. Salvi for the Applicants in all matters .
Mr. P.H. Gaikwad, APP for the Respondent No.2-State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 13th DECEMBER, 2017.

P.C.:-

The Applicant herein had filed Criminal Complaints bearing Nos.977/SS/2015 to 985/SS/2015 against the aforesaid Respondent No.1 for the offence under section 138 of Negotiable Instrument Act (for short 'the NI Act'). The learned Magistrate, upon considering the evidence, has dismissed the said complaints and acquitted the Respondent No.1-accused of offence under Section 138 of the NI Act. By these applications the Applicant-complainant has sought leave to prefer an appeal to challenge the said judgments of acquittal.

2. Ms Sangeeta Salvi, the learned counsel for the Applicant has submitted that the subject cheques were admittedly issued by the Respondent No.1-accused. The initial presumption is therefore, in favour of the Applicant-complainant. She has further submitted that receipt at Exhibit 19, which was issued by accused also amply proves that the accused had received the said amount from the complainant by way of loan. She has submitted that the learned Magistrate has not considered the receipts and has erred in holding that the cheque was not issued towards legally enforceable liability or further that the accused has rebutted the presumption under Sections 118 and 139 of the Act.

3. At the outset it may be mentioned that one of the essential ingredients of Section 138 of the NI Act is that the cheque, which is dishonoured, must have been drawn for the discharge, in whole or in

part, of any debt or other liability. Section 118 (A) of the NI Act raises a presumption that every negotiable instrument was made or drawn for consideration. Further Section 139 of the Act raises a presumption that the holder of a cheque had received the cheque of the nature referred to in Section 138 for the dischrage, in whole or in part, of any debt or other liability. The presumption under Sections 118 (A) and 139 of the NI Act are rebuttable on preponderance of probabilities .

4. The gist of the complaints is that the Respondent No.1, who runs his business in the name and style BNC Movies had taken business loan from the Applicant for making a film. Accordingly, they had entered into a MoU dated 10th June, 2014. The Applicant claims that he had given to the Respondent total amount of Rs.2,50,00,000/- as per the MoU dated 10th June, 2014 and had issued 9 cheques towards repayment of the said loan. Dishonour of the said nine cheques led to filing of aforesaid nine complaints for offence under Section 138 of the NI Act.

5. The Respondent No.1-accused has not disputed having issued the cheque. He has come up with a specific defence that the Applicant-complainant wanted financial assistance for creation of a

Hindi Movie. The said movie was to be written, produced and directed by the Applicant and his wife was to play a lead role in the said movie. In this context, the Respondent No.1 had introduced the Applicant to Mr. Anil Bhalla, producer and director of Hindi Films. Several meetings were held between the Applicant and Anil Bhalla. The story written by the Applicant did not appeal to Bhalla and the Applicant was required to make several changes in the script. Subsequently, Anil Bhalla declined to finance the film. This led to the Applicant filing FIR No.214 of 2015 against Anil Bhalla

6. The Respondent had further claimed that the Applicant had demanded Rs.5 crores for withdrawal of the said complaint. During subsequent meetings, the Respondent served as a Mediator and entered into an agreement/MoU with the complainant whereby the Respondent-accused agreed to pay to the Applicant a sum of Rs.3.25 crores for production of a film. It was agreed that the Respondent No.1 would issue 10 cheques towards security of payment of money, which was to be made by Anil Bhalla. As per the said MoU the Respondent No.1 issued 10 cheques for total sum of Rs.3,25,00,000/-. The details of the said cheques are mentioned in the MoU as well as in paragraph 10 of the reply to the statutory notice. The Respondent No.1 claims

that the cheques which are the subject matter of the aforestated criminal cases were issued as security and not towards repayment of loan or towards discharge of any liability. The Respondent claims that the Applicant has misused the said cheques for lodging complaints under Section 138 of the NI Act.

7. It is pertinent to note that in his evidence before the Court the Applicant had relied upon the receipts allegedly issued by the Respondent upon receipt of the loan amount. It may be mentioned that there is no reference to such receipts either in the complaints or in the statutory demand notices issued on behalf of the Applicant. Said receipts are of various dates from the year 2005 onwards whereas the alleged transaction is of the year 2014. Thus, as rightly held by the learned Judge, there is no nexus between the said receipts and the alleged transaction in respect of the subject cheques.

8. It is also to be noted that though the Applicant had stated that the said loan amount was paid in accordance with the MoU dated 10th June, 2014 the Applicant had not produced the said MoU. The said MoU which is a notarised document was in fact produced by the accused. Though the Applicant had disputed the genuineness of the

said MoU, the testimony of DW2 Rajaram Kakad, who is an Advocate and Notary, amply proves that the said MoU dated 10th June, 2014 was executed by the Applicant and by the Respondent No.1 on 10.6.2014. His evidence clearly proves that the Applicant and the Respondent No.1 had signed the said MoU in his presence and had affixed their photographs on the agreement as well as in the register maintained by him. The testimony of DW2 as well as the MoU and the extract of notary register amply prove that the said MoU was executed by the Applicant and the Respondent No.1.

9. The MoU gives the details of the cheques issued by the Respondent No.1 in favour of the Applicant. The subject cheques are the same cheques which are referred to in the said MoU. A perusal of the said MoU clearly indicates that the subject cheques were issued for the purpose of production of film and not towards repayment of loan.

10. It is also pertinent to note that the Applicant had claimed that he had given to the Respondent No.1 loan of Rs.2,50,00,000/-. Said amount was allegedly paid by cash. The Applicant has not placed on record Bank entries or any other document to prove such payment or to prove that he had financial capacity to advance such loan.

11. All the facts and circumstances raises a serious doubt on the Applicant's plea that the subject cheques were issued towards repayment of loan. The Respondent No.1 has succeeded in dislodging the Applicant's case and discharging the burden of rebutting the presumption under Section 118(a) and 139 of the NI Act. Having considered the totality of the above facts and circumstances, in my considered view the findings of the learned Trial Judge are based on evidence on record. There is no illegality or perversity in the findings.

12. Under the circumstances, the applications for leave to Appeal are hereby dismissed.

(ANUJA PRABHUDESSAI, J.)