

sbw

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

CRIMINAL REVISION APPLICATION NO.543 OF 2016

WITH

CRIMINAL APPLICATION NO.563 OF 2016

M/s. Harsha Traders & Anr.

... Applicants

vs.

M/s. Agrawal Agencies & Anr.

... Respondents

Mr. Vivekanand S. Tadake for the Applicants.

Mrs. M. R. Tidke, APP, for the Respondent-State.

CORAM : A.K. MENON, J.

DATE : 12th JUNE, 2017

P.C.

1. By the Revision Application, the applicants challenge an order dated 1st July, 2016 filed by the Sessions Court, Pune, whereby the appeal of the applicants challenging an order dated 4th December, 2012 passed by the Judicial Magistrate First Class, Pune, in a S.C.C. No.41297/2008 was partly allowed. The order of the JMFC reads as follows:-

“(1) The accused is held guilty under Section 255(2) of the Code of Criminal Procedure, 1973 for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

(2) He is sentenced to undergo simple imprisonment of one month and to pay a fine of Rs.7,00,000/- (Seven Lakh only) within four weeks from the receipt of a copy of this judgment, in default to undergo simple imprisonment for six months.

(3) On payment of fine amount by the accused, an amount of Rs.6,90,000/- (Six Lakhs Ninety Thousand only) shall be paid to

the complainant as compensation under Section 357(1) of the Code of Criminal Procedure, 1973 after appeal period is over.
(4) The accused to surrender his bail bonds."

2. As against this, the impugned order in the present Revision Application reduced the compensation payable to Rs.3,00,000/- and in addition thereto the amount of Rs.3,00,000/- has already deposited by the applicants was directed to be paid over to the first respondent/original complainant. The only point argued in support of this Revision Application is that the cheques were issued as security in relation to transactions of sale and purchase of goods and that no goods have been delivered by the first respondent to the applicant. In the circumstances, the cheques were not required to be honoured since the cheques represented the amounts/value of the goods which were sold but which were not delivered to the applicants. It is contended that the applicants had no legal liability towards the complainant. The learned counsel therefore submits that the impugned order be set aside.

3. The learned counsel for the applicants reiterated that it appears from the order dated 4th December, 2012 that the applicants were granted a complete opportunity to establish their defence and in particular the goods said to have been sold were delivered or not. However, it was found that the applicants have failed to establish such non-delivery despite opportunities to cross examine the complainant. Paragraph 18 of the order dated 4th December, 2012 clearly sets out that the accused failed to bring on record any material to establish his case.

On the other hand, the complainant had produced the relevant documents including the bill and relevant entries pertaining to the transaction and the cross examination does not appear to have dislodged the evidence produced by the complainant. In the circumstances, no case is made out for any interference. Accordingly I pass the following order:-

- (i) The Revision Application is accordingly disposed of.
- (ii) In view of disposal of the Revision Application, Application no.563 of 2016 will not survive and the same is also disposed of.

(A. K. MENON, J.)