IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR

CRIMINAL APPLICATION (APPA) NO.376 OF 2016

Darshan Chandulalji Jaiswal,
Aged about 55 years, Occu.
Agriculturist, R/o Ambedkar
Ward, Pandharkawdha,
Tah. Kelapur, Dist. Yavatmal ..APPLICANT

VERSUS

Mr Dilip s/o Bhumanna Shirtawar,
Aged about 52 years, Occu. Service
(Teacher), R/o Chintamani Layout,
Sankat Mochan Road,
Pandharkawadha,
Tah. Kelapur, Dist. Yavatmal ..RESPONDENT

Mr S.Y. Deopujari with Mrs S. Kulkarni/Potey, Advocate for applicant;
Mr A.S. Dhore, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 21st March, 2017

ORAL ORDER

By this application under Section 378 (4) of the Code of Criminal Procedure, the applicant seeks leave to file appeal for challenging the judgment and order of acquittal dated 20.04.2016, rendered by learned Judicial Magistrate, First Class, Kelapur, in Summary Criminal Case No. 88 of 2013, thereby acquitting respondent-accused of an offence punishable under Section 138 of the Negotiable Instruments Act.

2. It is claimed that Exhibit-35 is a cheque for an amount of Rs. 50,000/-, claimed to have been issued by respondent-accused towards repayment of hand loan to the present applicant.

3. While defending the prosecution under Section 138 of the Negotiable Instruments Act, the respondent-accused has come out with a defence that though the cheque was issued after signing the same, still it was a blank cheque issued as security in relation to money lending transaction.

4. Mr. Deopujari, learned Counsel appearing on behalf of the applicant would strenuously urge that the order of acquittal is contrary to the presumptions provided under Sections 139 and 118 of the Negotiable Instruments Act, as according to him, the issuance of cheque and signature thereon is not disputed, the entire burden lies on the respondent-accused to prove that the cheque was not issued towards legally enforceable debt or liability. He would then urge that the finding recorded by the learned Magistrate, particularly as regards Exhs. 75 and 76 are out of context, as filing of complaints under Section 138 of the Negotiable Instruments Act on earlier occasion against some other accused persons and non disclosure thereof will hardly have any direct bearing over the outcome of the present prosecution. He would then urge that even if the accused has come out with a defence that the applicant was engaged in the money lending transaction, such allegation was not taken to its logical end, as the learned Judicial Magistrate First Class, vide judgment and order dated 8th April, 2015 passed in Summary Criminal Case No. 136 of 2014 has acquitted the present applicant of offences punishable under Sections 504, 506 of the Indian Penal Code and Sections 32-B and 33 of

the Bombay Money Lending Act. According to him, there is a strong case for reconsideration.

5. Per contra, learned Counsel appearing on behalf of respondent-accused supported the judgment of acquittal on the count that the same does not warrant any interference. According to him, the complainant has not come out with clean hands before the Court below. The said consideration has weighed before the learned Magistrate, in addition to the fact that he has failed to prove that the cheque in question was issued towards legally enforceable debt or liability.

6. Considered rival submissions. It is to be noted that the prosecution of the complainant in Summary Criminal Case No. 136 of 2014 for offences punishable under Sections 504, 506 of the Indian Penal Code and Sections 32-B and 33 of the Bombay Money Lending Act has resulted into acquittal. The said prosecution of the present applicant was at the behest of the respondent-accused, as he has specifically come out with a case that the applicant-complainant, without any valid license was indulging into illegal activity of money lending. The said prosecution has resulted into dismissal of the complaint case, as the Magistrate has recorded that the said complaint was barred by limitation. As such, it cannot be inferred that there is an acquittal in favour of the applicant-complainant on merits *qua* the charge of activity of illegal money lending.

7. Apart from above, it is required to be noted that in the cross examination of the complainant while responding to the query as to the filing of other complaints under Section 138 of the Negotiable Instruments Act, he has specifically stated that it was the first complaint that he had filed under Section 138 of the Negotiable Instruments Act and on earlier point of time he had never initiated such proceedings against anybody. The respondent-accused in his evidence has produced certified copies of the complaints at Exhs. 75 and 76, filed by the applicant demonstrating that the applicant had, in fact, on earlier occasion initiated such complaints which he had suppressed, rather concealed said factual matrix from the Court below with an intention to gain mileage from the Court.

8. Though a submission is made that the said issue will not have any direct bearing over the present matter, still it is to be noted that the claim of respondent that the applicant was indulging in money lending transaction appears to be having some substance, particularly in the backdrop of alleged concealing of the material facts.

9. Though there is presumption under Sections 139 and 118 of the Negotiable Instruments Act in favour of the applicant-complainant as the signature on the cheque was admitted by the respondent-accused, still such presumption is rebuttable. The defence of the respondent-accused in the instant case appears to be that of money lending transaction. In the wake of the findings recorded herein above, particularly in relation to approach of the present applicant of suppressing material facts before the

Court below, in my opinion, the acquittal order by the learned Magistrate does not warrant any interference. In view thereof, no case for indulgence is made out. Leave refused. Criminal Application, therefore, stands rejected.

(N.W. SAMBRE, J.)

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