**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR**

CRIMINAL APPLICATION (APPA) NO.637 OF 2014

Aniruddha s/o Vasudeo Kamble,
Aged about 58 years, Occ. Business,
R/o Plot No.328, Opposite V.M.V.
College, Wardhaman Nagar,
Nagpur, Tah. & Dist. Nagpur ..APPLICANT

VERSUS

1) State of Maharashtra,
Through Police Station Officer,
Ajni Police Station, Ajni,
Nagpur, Tah. & Dist. Nagpur

2) Jayaji Tukaram Salve,
Age – Major, Occ. Retd Officer,
S.B.I., Nagpur,
R/o New Kailash Nagar,
Nagpur, Tah. & Dist. Nagpur ..RESPONDENTS

Ms Kirti Deshmukh, advocate holding for Mr A.H. Lohiya, Advocate for applicant;
Mr V.P. Gangane, Addl. Public Prosecutor for respondent no.1;
Mr J.Y. Ghurde, Advocate for respondent no.2

CORAM : N.W. SAMBRE, J.

DATE : 15th March, 2017

ORAL ORDER

Heard respective Counsel at length.

2. By judgment and order dated 18th August, 2014, passed in S.C.C. No.8760 of 2011, learned 28th Judicial Magistrate First Class, Nagpur, acquitted the applicant – accused of the offence punishable under Section 138 of the Negotiable Instruments Act. As such, present application.

3. According to the learned Counsel appearing on behalf of the applicant, once respondent-accused has admitted his signature on the cheque (Exh.23), the presumption under Section 118 of the Negotiable Instruments Act should have been drawn and the learned Magistrate should have ordered his conviction. In addition, a submission is made that once the money lending transaction having been admitted, non-maintenance of the record by the money lender is an issue which goes to the benefit of the complainant and not to the accused. According to her, the interpretation of provisions of Section 35-A of the Bombay Money Lenders Act by the learned Magistrate in favour of the accused is an error apparent on the face of record.

4. Learned Counsel appearing on behalf of the respondent – accused opposed the claim on the ground that the learned Magistrate has considered all facets of the matter and has ordered acquittal based on the interpretation of the money lending agreement, non-maintenance of the record, viz. cash book, etc. by the complainant - money lender and also interpreted the presumption under the Negotiable Instruments Act.

5. From the rival submissions of the parties, it is required to be noted that the respondent – accused has not disputed his signature on cheque (Exh.23). In the wake of said admission, in my opinion, the learned Counsel appearing on behalf of the applicant – complainant was right in inviting attention of this Court to the presumption against the accused under the Negotiable Instruments Act. No doubt, the presumption is

rebuttable and accused has every right to lead evidence in support of rebuttal of such presumption, however, in the case in hand, what is required to be noted is, the learned Magistrate has taken recourse to the various provisions of the Bombay Money Lending Act. While dealing with the conduct of the complainant, particularly a money lender and keeping in mind the object with which the Bombay Money Lenders Act is enacted, the learned Magistrate has proceeded to order acquittal. Such acquittal is based on the conduct of the applicant – complainant of not maintaining proper record under the Bombay Money Lenders Act.

6. Once the signature on the cheque is admitted, burden shifts on the respondent – accused, however, in my opinion, once this Court has held that the provisions of Section 35-A of the Bombay Money Lenders Act are mandatory in nature, the acquittal of the accused as ordered by the learned Magistrate does not call for any interference.

7. In view thereof, Criminal Application stands rejected.

(N.W. SAMBRE, J.)

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