

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

CRIMINAL REVISION APPLICATION NO. 187 OF 2017

1. Subhash S/o Fakirrao Dhuldhule,
Age: 58 years, Occ.: Agri & Business,
and President of People Bahuddeshiya
Gramvikas Pratisthan Pedgaon
2. Ramesh S/o Kondba Khandare,
Age: Major, Occ.: Agri & Business,
and Secretary of People Bahuddeshiya
Gramvikas Pratisthan Pedgaon
Both R/o. Pedgaon, Tq. & Dist. Hingoli

**...APPLICANTS
(Ori. Accused)**

Versus

1. The State of Maharashtra
Through Police Station Basamba,
Tq. & Dist. Hingoli.
2. Siddharth S/o. Khandoji Khandare,
Age: 49 years, Occ.: Business & Agri,
R/o Parda, Tq. & Dist. Hingoli.

**... RESPONDENTS
(Resp. No.2 is Ori. Complainant)**

Mr. D. M. Shinde, Advocate for the Applicants.
Mr. A. R. Kale, A.P.P. for Respondent-State.
Mr. M. M. Parghane, Advocate for Respondent no.2.

WITH

**CRIMINAL APPLICATION NO. 832 OF 2018
IN**

CRIMINAL REVISION APPLICATION NO. 187 OF 2017

Siddharth S/o Khandoji Khandare,
Age: 50 years, Occ.: Business and Agri,
R/o: Parada
Taluka and Dist. Hingoli.

...APPLICANT

Versus

1. The State of Maharashtra
Through Police Station Basamba,
Tq. & Dist. Hingoli.
2. Subhash S/o Fakiraro Dhuldhule,
Age: 58 years, Occ.: Agri & Business,
and President of People Bahuddeshiya
Gramvikas Pratisthan Pedgaon.
3. Ramesh S/o Kondba Khandare,
Age: Major, Occ.: Agri & Business,
and Secretary of People Bahuddeshiya
Gramvikas Pratisthan Pedgaon
Both R/o. Pedgaon, Tq. & Dist. Hingoli

... RESPONDENTS

Mr. M. M. Parghane, Advocate for the Applicant.
Mr. A. R. Kale, A.P.P. for Respondent-State.

CORAM : MANGESH S. PATIL, J.
RESERVED ON : 19.07.2018
PRONOUNCED ON : 23.08.2018

JUDGMENT:

Rule. The Rule is made returnable forthwith. The learned A.P.P.

waives service for respondent no.1 and the learned advocate for the respondent no.2 also waives service. With the consent of both the sides the matter is heard finally.

2. By this revision under Section 397 read with Section 401 of the Cr.P.C. the applicants are impugning the judgment and order passed by the learned Judicial Magistrate First Class, Court No.3, Hingoli in S.C.C. No. 1429 of 2007 on 05.04.2010, convicting them under Section 138 of the Negotiable Instruments Act and sentencing them to suffer R.I. for three months each and to pay compensation of Rs. 1,00,000/- to the respondent no.2 complainant under Sub-section 3 of Section 357 of the Cr.P.C. and also being aggrieved and dissatisfied by the judgment and order passed by the learned Additional Sessions Judge, Hingoli in Criminal Appeal No. 17 of 2010 dated 31.07.2017 dismissing the appeal and confirming the conviction and the sentence awarded by the learned Magistrate.

3. In sum and substance, in the complaint lodged by the respondent no.2 the allegations were to the effect that the applicants were the President and Secretary of People Bahuddeshiya Gramvikas Pratisthan, Pedgaon (Society) respectively in the year 2007. He was acquainted to them. On

01.01.2007 they sought a hand loan of Rs. 1,25,000/- from him. Since he was having Rs.1,00,000/- only he paid them the money. They assured him to repay it by 16.09.2007. When he met them on the scheduled day they gave him the cheque for an amount of Rs.1,00,000/- payable from the account of the Society. He presented the cheque with his banker on 05.11.2007 for encashment but it was returned for want of sufficient funds in the account of the Society. On 17.11.2007 he issued statutory notice. It was served to them still they did not either reply the notice or repay the money and accordingly the complaint was lodged.

4. The applicants appeared in the matter. Their plea was recorded and the evidence was led. It was their defence that the respondent no.2 was not financially sound enough to give them a hand loan of Rs.1,00,000/-. In fact for few days he was working in their Society and had stolen some blank and signed cheques and has misused one of those. In support of their plea they also led evidence to show that they had given a public notice in a newspaper informing public at large regarding loss of the cheques. However, the learned Magistrate was not convinced by the defence and relying upon the evidence led by the respondent no.2 convicted the applicants and sentenced

them as mentioned herein-above. The appeal preferred by them was also dismissed by the impugned judgment and order.

5. The learned advocate for the applicants vehemently submitted that though there is a presumption available in favour of the complainant contained in Section 139 of the Negotiable Instruments Act, it is not a conclusive presumption and can be rebutted. He would further submit that while considering the defence, the accused are entitled to lead evidence which merely improbabilises the prosecution case. It is not expected to prove the defence beyond reasonable doubt and can rebut a presumption merely on preponderance of probabilities. In support of his submission he placed reliance on the decision of the Single Judge of this Court in the case of ***Rajendraprasad Gangabishen Porwal v. Santoshkumar Parasmal Saklecha and Anr; 2008 CRI. L.J.2955***. The learned advocate would submit that the defence of the applicants stood established when they had pointed out that they had published a notice in the news paper about the cheques having been lost / stolen well before 23.08.2006, whereas the cheque in question bears date 16.09.2007 which clearly improbabilises the allegations about the cheque having been issued by the applicants much less towards some legally

enforceable debt.

6. The learned advocate coupled with the above fact would further submit that the respondent no.2 had clearly admitted that his yearly income was around Rs. 70,000/- to Rs. 80,000/- and his family consisted of 8 to 10 members which would demonstrate that he was not capable of possessing a huge sum of Rs.1,00,000/- for being paid to the applicants by way of a hand loan. Therefore, according to the learned advocate these two circumstances are sufficient to draw a reasonable conclusion and were sufficient to rebut the presumptions under Section 118-A and 139 of the Negotiable Instruments Act as well as presumption under Section 114-C of the Indian Evidence Act.

7. The learned advocate for the applicants would submit that both the Courts below have failed to consider these facts and circumstances and evidence in the proper perspective and have not appreciated it correctly. They have unnecessarily given weight to the circumstance of failure of the applicants to approach police and failure on their part in not giving reply to the statutory notice. The learned advocate therefore submitted that the Courts below have committed error in appreciating the evidence and the circumstances probablizing the defence and have illegally discarded it.

Revision may be allowed.

8. The learned advocate for the respondent no.2 supported the judgment and orders of the two Courts below. He submitted that no fault can be found with the reasoning given by them. They have rightly appreciated the facts and circumstances and the evidence. They have also considered the defence in the proper perspective and have rightly concluded about the applicants having failed to substantiate the defence. They have arrived at a plausible conclusion which cannot be interfered with in this revision.

9. It is trite that when there is concurrent findings of the facts of the two Courts below, the Court exercising the revision under Section 397 of the Cr.P.C. has to be slow in interfering with such concurrent findings. It can and should interfere only where the conclusions arrived at by the Courts below are perverse or arbitrary or based on a gross error in appreciating the evidence and the law. If the decision of the courts below are arrived at with a plausible inference deducible on the basis of the evidence, the revisional Court should refrain from interfering in the decisions. Bearing in mind these principles let us consider the facts, circumstances and the evidence that was obtaining before the two courts below.

10. As is apparent, the applicants are heavily banking upon their defence which they seek to establish primarily on two grounds. Firstly, according to them, they had never issued the cheques. In fact it was stolen and they had also published a public notice even before the date of the cheque to the effect that the cheque was stolen. Secondly, according to them the respondent no.2 was not financially capable of giving a huge amount of Rs.1,00,000/- as a loan.

11. Taking up the first ground, true it is that the applicants seem to have given public notice in a newspaper on 23.08.2006, whereas the cheque bears the date 16.09.2007. However, ignoring anything else, even if it is accepted that the cheque was actually stolen or lost before 23.08.2006, one could not comprehend as to why it could not have been found subsequently. Merely because it was lost or stolen about a year prior to the actual date on which it was issued, there could be a possibility of the cheque having been subsequently found. Though it is a sheer guess, the possibility cannot be ruled out outrightly.

12. Besides, as has been rightly appreciated by the learned Magistrate

as well as the learned Additional Sessions Judge, there are couple of very cogent and relevant reasons which plausibly refute the defence. Admittedly, immediately after the cheque was stolen or lost or may be at any subsequent point of time the applicants had not given any complaint with the police regarding such loss or stealing of the cheque. An man of ordinary prudence particularly when the cheque which is lost or stolen also bears the signatures would be prompt in reporting the matter to police. Since the applicants have not resorted to such a step this indeed becomes a strong circumstance which weighs against them.

13. Again, assuming that the cheque was lost or stolen or was attempted to be misused by the respondent no.2, when, admittedly he had served them the statutory notice prior to the filing of the complaint, a man of ordinary prudence in their place would certainly have promptly sent a reply pointing that the cheque was being misused. Their such inaction further belies their defence.

14. There is one more aspect which even the two Courts below seem to have lost sight of. If really a signed cheque is lost, the account holder would certainly, even before approaching the police or giving a public notice

would approach the banker where the cheque is certain to come back for encashment and request the banker to stop the payment. Even such a course does not seem to have been followed by the applicants. In my considered view, this is a more vital circumstance which clearly demonstrates as to why the conduct of the applicant does not befit to the persons who have lost the cheque and apprehend that it would be misused. Taking into account, these three circumstances, those are easily more than sufficient to discard the evidence led by the applicants to rebut the presumptions under Section 139 and 118-A of the Negotiable Instrument Act and the one under Section 114-C of the Indian Evidence Act. There is no error committed by the lower Courts in appreciating these circumstances and coming to the conclusion which they have.

15. A lame attempt was made by the applicants even to prove that a copy of the public notice was even given by them to the bank concerned, during the cross-examination of Balaprasad (PW-2) and testimony of Ramesh (DW-2). However, as has been rightly pointed out by the learned Magistrate, since it was a correspondence between the society and the bank, there ought to have been some formal acknowledgement of the receipt of the public notice

by the bank. In the absence of such record, the evidence about the applicants having informed the bank of loss of the cheque was rightly refuted by the Magistrate.

16. Now coming to the other limb of defence arguments regarding incapability of the respondent no.2 to pay a huge money by way of hand loan, the sum of Rs.1,00,000/- cannot be said to be such a huge sum which a person cannot possess in cash and even the respondent no.2 in his testimony has explained as to how the money was with him which explanation is clearly plausible and has been rightly accepted by the Magistrate. As is pointed out by the learned Magistrate, in the case of **Rajendraprasad (supra)** the cheque was for a huge sum of Rupees Twenty Five Lakhs and in the facts and circumstances it was held that the complainant therein had not given plausible explanation for his liquidity to that extent.

17. Considering all these aspects, the evidence and the facts which stand proved on that basis, the conclusion drawn by the Magistrate and the learned Additional Sessions Judge are clearly plausible. There is no infirmity or illegality committed by them in appreciating the evidence and the circumstances. The decisions cannot be said to be either perverse, arbitrary or

capricious so as to enable this Court to vest with the powers under Section 397 of the Cr.P.C. The revision is liable to be dismissed.

18. The Revision is dismissed.

19. The respondent no.2- complainant is allowed to withdraw the amount of Rupees 75,000/- deposited in this Court and also the amount of Rupees 25,000/- deposited in the Sessions Court.

20. Criminal Application No.832 of 2018 is accordingly disposed of.

21. The Rule is discharged.

[MANGESH S. PATIL, J.]