

Sarnobat

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

CRIMINAL APPLICATION NO. 74 OF 2014

Balkrushna Popat Mogal.

.. Applicant.

Vs.

Pratik Bhagwat Bhandare & Anr.

.. Respondents

Mr. Kuldeep S. Patil a/w Saili Dhuru for the Applicant.

Mr. Burhan V. Bukhari for the Respondent No.1.

Mr. P. H. Gaikwad-Patil, APP for the State.

CORAM : PRAKASH D. NAIK, J.

DATE : 25th JANUARY, 2018.

P. C. :

1. The applicant is the original complainant in SCC No. 359/2012 filed in the Court of Judicial Magistrate First Class, Pimpalgaon, Nashik. The complaint was filed for the offence punishable under section 138 of the Negotiable Instruments Act. Respondent No. 1 was prosecuted in the said complaint.

2. The case of the complainant is that the accused was dealing in banking business in connection with commodity marketing. The accused offered complainant to invest some amount in his business. Accordingly, in the year 2007-2008, the complainant had invested Rs.3,50,000/- with the accused for the purpose of marriage of his daughter. In the first week of March, 2012, when the complainant

demanded his amount along with interest, the accused issued cheque dated 17th March, 2012 for an amount of Rs.3,00,000/-. The said cheque was dishonoured on account of insufficient funds. The notice was issued demanding the amount vide registered post which was received by the accused. However, the payment was not made. Hence, the complaint was filed.

3. The complainant examined himself by tendering the affidavit of evidence. The complainant was cross examined at the instance of the accused. The accused had also examined himself in support of his defence. After recording the evidence, the Trial Court vide judgment and order dated 27th January, 2014 acquitted the accused. Hence, the complainant has preferred this application seeking leave to file an appeal against the judgment and order of acquittal.

4. The learned counsel for the applicant submitted that the Trial Court has committed an error in acquitting the accused. The complainant has established that the cheque was issued in discharge of liability. The accused had failed to rebut the presumption under section 139 of the N.I. Act. The court has committed an error in arriving at the conclusion that the complainant did not prove that legally enforceable liability was existing and that the cheque was issued in discharge of liability. It is further submitted that there is no evidence on

record rebutting the presumption and therefore, the accused ought not to have been acquitted by the court. The requisite evidence of the complainant is supported by the documents and therefore, the accused ought to have been convicted.

5. On the contrary, the counsel appearing for the respondent submitted that there is no infirmity in the impugned judgment and order passed by the Trial Court. There is no reason to interfere in the order passed by the Court. The complainant has failed to prove that the impugned cheque was issued in discharge of liability. The accused had examined himself and through his evidence, as well as through the cross examination of the complainant, the accused has rebutted the presumption and therefore, there is no illegality in the order of acquittal. It is therefore, submitted that the application may be rejected.

6. Perused the impugned judgment and the relevant documents which are part of record. The complainant has examined himself and has placed on record the documents such as cheque, bank memo, postal acknowledgment of notice, hand loan receipt dated 14th January, 2011 executed between parties. The accused has also examined himself in order to rebut the presumption and thereby adduced evidence by way of affidavit. The accused also relied upon other documents such as reply dated 28th April, 2012 issued to the notice sent by the complainant, returned envelope containing notice

reply, deposit receipt and 7x12 extracts in relation to the concerned properties.

7. The Trial Court has examined the aforesaid evidence and after assigning reasons passed the order of acquittal.

8. The defence of the accused appears to be of total denial. From the cross examination and the evidence adduced by the accused it is apparent that, the defence of the accused is that in the month of October, 2010 a loan of Rs.1,00,000/- was obtained. Thereby, the receipt was executed and the two blank cheques towards security of hand loan were handed over to the complainant. Though, the amount was repaid, the complainant did not return blank signed cheques and informed the accused that he has misplaced them. The complainant thereafter, misused the said cheques which are subject matter of the complaint. It is the contention of the accused that the complainant has not produced any documentary evidence to show that the amount was invested with the accused and that the cheques were issued in discharge of any liability. The Trial Court has observed that the defence of the accused can be evaluated in the light of the facts emerged during the cross examination of the complainant which reveals that, as soon as the accused received the notice, he had replied the same. The accused had entered into witness box in support of his evidence and deposed that in the year 2010 he had borrowed loan of Rs.1,00,000/-

from the complainant and said amount was repaid vide cheque dated 21st October, 2011. It is further observed that the accused has proved the contents of the reply dated 28th April, 2012 in which it was contended by the accused that he had already repaid the hand loan of Rs.1,00,000/- but, despite of request the cheques were not returned to him.

9. The Trial Court had further observed that the cheque was blank and except signature of the accused, there was no other details filled up in the cheque. It is also observed that the date and the name of holder of the cheque appears to be written in different pen and therefore, the possibility cannot be ruled out that the rest of the columns are filled up subsequently. It is further observed that in the substantial evidence, the complainant has testified that in the year 2004-2005 they cultivated grape farm and he had received handsome income from the said farm, which was invested by him with the accused. In the cross examination he was asked whether he will be able to produce any documents to support the aforesaid assertion. The complainant refused to produce any document. The complainant has admitted in the cross examination that accused had obtained hand loan of Rs.1,00,000/- which he had repaid in the month of October, 2011. The court further observed that the complainant who was diligent, when he had paid hand loan of Rs.1,00,000/- and got executed hand

loan receipt but when the complainant claims to have huge amount of Rs.3,50,000/-, he had not executed any document from the accused. The court however, accepted the fact that the cheques were dishonoured on account of insufficient funds and that the notice of demand has been served upon the accused.

10. On perusal of the evidence on record in the form of the evidence adduced by the complainant, his cross examination, the evidence of the accused, his cross examination and the documentary evidence on record, I do not find that there was any infirmity in the judgment of acquittal passed by the Trial Court. The Trial Court has assigned cogent reasons while acquitting the accused. The cross examination of the complainant supports the defence of the accused. The accused has also examined himself in support of his defence. The cheques were blank and except the signature of the accused, the other columns were blank. The Trial Court has observed that the contents of the cheques were filled up in a different ink, although the liability can be established even in respect to the blank cheques. However, in the present case, the circumstance as the cheques were blank supports the defence of the case that the loan of Rs.1,00,000/- which was obtained by him was repaid vide cheque. The complainant has therefore, not been able to establish the fact that the cheques were issued in discharge of legally enforceable liability. In the circumstances,

no interference is required in the impugned judgment and order of acquittal. This application therefore, fails and deserves to be rejected.

Hence, I pass the following order;

ORDER

- i) Leave refused.
- ii) Criminal Application No. 74 of 2014 is rejected.

[P. D. NAIK , J.]