

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.214 OF 2016

**MANGILAL RAMCHANDRA BAJAJ)
(Deceased) THROUGH LEGAL HEIRS)
MANGABHISHAN MANGILAL BAJAJ & ANR.)...APPLICANTS**

V/s.

GANPATRAO D. LATNE AND ANOTHER)...RESPONDENTS

Mr.Umesh Mankapure, Advocate for the Applicant.

Mr.S.S.Diwan i/b. Mr.A.M.Kulkarni, Advocate for Respondent No.1.

Ms. Anamika Malhotra, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 8th JUNE 2018

P.C. :

1 This is an application for grant of leave to appeal by
the original complainant challenging acquittal of respondent no.1
of the offence punishable under Section 138 of the Negotiable
Instruments Act, passed by the learned trial court vide impugned

judgment and order dated 24th May 2016 in Criminal Case No.1253 of 2008.

2 Heard the learned advocate appearing for the applicant/original complainant. By relying on the acknowledgment of debt at Exhibit 31 allegedly executed by the respondent no.1/original accused, the learned advocate for the applicant/original complainant has argued that legally enforceable debt has been proved by the complainant, and therefore, the impugned judgment and order of acquittal is perverse.

3 The learned advocate appearing for the respondent no.1/original accused argued that cheques were dishonoured as they were invalid instruments, as admitted by the Power of Attorney holder of the complainant, who is examined as CW1. Another witness named Devendra from the bank examined by the complainant has vouched this fact, and therefore, the complaint as filed and framed, was not legally tenable. The learned APP demonstrated that the cheques were not for legally enforceable

debt, as the amount of cheque was more than what was claimed in the complaint. CW1 Pawan Bajaj, who deposed on behalf of the complainant, was not having any personal knowledge in the matter.

4 I have carefully considered the rival submissions and also perused the record made available during the course of hearing including copies of deposition of witnesses examined by the complainant and the documentary evidence.

5 The complainant claims to be the Proprietor of Bajaj Tobacco Company. According to his case, he had lend an amount of Rs.5 lakh to the respondent no.1/accused in the year 2001, at the rate of interest of 21%. The respondent no.1/accused had issued two cheques dated 15th January 2008 and 8th February 2008 for an amount of Rs.5,00,000/- as well as Rs.6,05,000/- for discharge of the debt. As those cheques were dishonoured, after compliance of necessary legal formalities, a complaint came to be filed.

6 During the course of trial, the complainant had examined Pawan Bajaj – Power of Attorney holder of the complainant as well as bank witness Devendra Chavan and reliance was also placed on documentary evidence. The respondent no.1/accused did not enter into the witness box. After hearing the parties, the learned trial court was pleased to dismiss the complaint by acquitting the respondent no.1/accused of the alleged offence.

7 Perusal of the evidence adduced by the complainant goes to show that both the cheques were not honoured as those were found to be invalid instruments by the banker. CW1 Pawan has categorically admitted this fact in the course of his cross-examination. Similarly, CW2 Devendra Chavan, who is employee of the bank, also stated that the deposited cheques could not be honoured as those were invalid instruments. The cheques were issued on Annasaheb Janata Sahakari Bank, Sangli. Prior to their presentation, the said bank came to be acquired by Saraswat

Bank. Then those cheques were presented for encashment and ultimately, those were dishonoured as invalid instruments. The complaint itself demonstrates that the amount which was due and payable was Rs.11,04,514/- whereas the cheques issued were totalling Rs.11,05,000/-. The amount of cheque, as such, was more than the amount claimed to be due and payable by the accused. There is no evidence in respect of the actual amount due and payable. In this view of the matter, the learned trial court held that by preponderance of probability, the presumption stood rebutted and I do not find any infirmity in the said conclusion. Ultimately, CW1 Pawan, who is examined by the complainant, was not having any personal knowledge in the matter and he had not even seen the execution of the disputed cheques as well as other documents.

8 In this view of the matter, the judgment of acquittal based on sound principle of law and proper appreciation of evidence on record, no case for interference is made out. Therefore, the order :

ORDER

The application for grant of leave to appeal is rejected.

(A. M. BADAR, J.)