IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.221 OF 2016

Lakhmichand Bundalal Parakh .. Applicant
Versus
The State of Maharashtra and anr .. Respondents

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Mr. Aniket Nikam for the applicant.
Ms.S.D.Shinde, APP for the State.
Mr.S.B. Deshmukh with Mr.Pawan Dhore, Irani D'Souza for respondent no.2.

CORAM: SMT. BHARATI H.DANGRE, J

DATED : 4th SEPTEMBER, 2018

P.C:-

1 The present application is taken out seeking Leave to Appeal, thereby assailing the order dated 2nd June 2016 passed by the Judicial Magistrate First Class, Nagpur, thereby acquitting the respondent of the offence punishable under section 138 of the Negotiable Instruments Act, 1988. The applicant seeks leave on the ground that the reasoning recorded in the order dated 2nd June 2016 is not plausible and that the

learned Metropolitan Magistrate has committed an error in arriving at a conclusion that the said cheque which was issued to the complainant forms part and parcel of the group of cheques in respect of which a complaint was lodged with the Bank long back in the year 2007. The specific submission is that the accused had failed to pay the amount which was due and when a demand notice was served to him on 5th July 2013, the defence which was sought to be raised before the Metropolitan Magistrate, was not raised and therefore, the Magistrate has erred in acquitting the accused.

2 Perusal of the order dated 2nd June 2016 would reveal that the complainant had deposited the cheque and he was made aware that there was an order of stoppage of payment and the endorsement made thereupon was “payment stopped by the drawer”. While dealing with the said contention, the Metropolitan Magistrate has framed the issues and also permitted the presumption under Section 118 of the Negotiable Instruments Act to be raised. The accused in an attempt to rebut the presumption has examined the employee

of the Bank Shri Gajanan Sutar who was working as a Manager with the Mahanagar Co-operative Bank. During the course of his testimony before the Magistrate, he deposed that the complainant had made a complaint with the Bank in the year 2007 and thereafter, on account of the facility available under the CTS (Cheque Truncation System), thereby permitting the stopping of the finances on account of the physical cheque being issued by the drawer to the drawee, the computer made a noting in its system in respect of the 'stop payment'. The cheque number which was issued to the complainant i.e. cheque no.193504 was a part of the complaint that was lodged by the accused. Based on the said testimony of the Manager of the Bank, the Metropolitan Magistrate derived a conclusion that it was not presumed by the accused that this cheque would be presented in the year 2014 and would be dishonored, and therefore, he managed to obtain an entry to that effect in the year 2007 itself. Though the learned counsel for the applicant would submit that the testimony of the said Bank Manager is not trustworthy and he invited my attention to the cross-examination to which he was subjected to. On perusal of the

cross-examination, it can be seen that the said Manager has only disputed that the said extract of the entry was not forwarded or entered into, in the inward/outward register. The allegation of the learned counsel for the applicant is that the record which was produced was on a one side rough paper that creates a doubt on the case of the accused and this is ignored by the Metropolitan Magistrate. Perusal of the testimony of the Manager, would reveal that he had categorically stated that the entries were taken on the basis of the complaint that was made on 8th September 2007 when an application was made for stopping the payment. He deposed before the Court that the cheque which came to be dishonored and in respect of which a complaint has been made forms part and parcel of those cheques in respect of which the payment had been stopped.

In such circumstances, in my opinion, the Metropolitan Magistrate has rightly recorded the conclusion based on a possible and a plausible defence that has been put forth by the applicant and thereby he had discharged the burden qua the presumption to be raised under Section 118 of

the Negotiable Instruments Act. In such circumstances, since there is no illegality or perversity in the order passed by the Judicial Magistrate First Class. The said order calls for no interference. The present application seeking leave to file an Appeal against the said order, therefore, cannot be granted. Leave refused.

Criminal Application is dismissed.

(SMT. BHARATI H. DANGRE, J.)

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