IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.967 OF 2012
(Leave to Appeal)
IN
CRIMINAL APPEAL NO. OF 2012

Bhikajji Baban Bhagwat .. Applicant
Vs.
Anil Laxman Lipare & Anr. .. Respondents

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Mr.P.D. Pise, Advocate for the Applicant.
Mrs.M.R. Tidke, APP for the Respondent – State.
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CORAM : PRAKASH D. NAIK, J.

DATED : FEBRUARY 20, 2018.

P.C. :

Applicant has preferred this application under Section 378(4) of the Code of Criminal Procedure, seeking leave to file an appeal against the judgment and order dated 17th May, 2012, passed by the Judicial Magistrate First Class, Karad, in S.C.C.No.1131 of 2008.

2 Applicant is the original complainant. The complaint was filed for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The case of the complainant is that the complainant was having cordial relationship with the

respondent – accused. The accused was having the fabrication workshop and was dealing with the business of selling iron material and iron roof sheets. The applicant – complainant was in need of iron roof sheets and, hence, he approached the accused. The complainant made an advance payment of Rs.45,000/-, to the accused. On receipt of the payment, the accused promised that the goods will be delivered to the complainant. However, it was noticed that the workshop was closed and the whereabouts of the accused were not known. The complainant did not receive the iron roof sheets. Ultimately, the accused issued a cheque for an amount of Rs.45,000/-, dated 10th July, 2008, towards refund of the amount accepted by him. The said cheque was dishonoured when deposited by the complainant. Thereafter, the demand notice was issued and the complaint was filed.

3 Respondent was tried before the Court of 5th Civil Judge and Judicial Magistrate First Class, Karad, vide Summary Criminal Case No.1131 of 2008. the complainant adduced his evidence and also examined one witness in support of his complaint. Trial Court vide order dated 17th May, 2012, acquitted the accused for the said offence.

4 Learned advocate for the applicant submitted that the trial Court has committed an error in acquitting the accused. The cheque was issued by the accused. The complainant had adduced oral as well as documentary evidence in support of his complaint and has established the fact that the cheque was issued in discharge of the liability. The accused did not lead any evidence in his defence and has not succeeded in rebutting presumption. It is submitted that there was no substance in the defence of the accused that one Kulkarni is the money lender and that the accused had borrowed the said amount from him and that the cheque given to him was misused by the complainant. It is submitted that all procedural safeguards were complied by the complainant and there is no reason to disbelieve the evidence adduced by the complainant.

5 I have perused the judgment of the trial Court and the evidence on record. The trial Court while acquitting the accused has assigned cogent reasons. The view of the trial Court is possible view in the facts and circumstances of the present case and, I do not find any reason to interfere in the findings of the trial Court.

6 The trial Court has appreciated the evidence on record while passing the impugned judgment and order. Trial Court has rightly observed that the case of the complainant cannot be accepted in the light of the evidence on record. It was observed that the complainant has not furnished any details about the date of transaction. The trial Court has also considered the evidence of the complainant and taking into consideration the infirmities in the evidence of the witnesses, the accused was acquitted.

7 The accused had allegedly issued the cheque on 10th July, 2008. It is the case of the complainant that accused is dealing in iron material. The defence of the accused was that he had obtained loan from one Dr.Kulkarni, and at that time cheque was handed over to him. The complainant is working for Dr.Kulkarni and the said cheque which was handed over to Dr.Kulkarni was misused by the complainant. There was no transaction of whatsoever nature with the complainant. The respondent–accused has also pointed out that criminal prosecution was launched against Dr.Kulkarni for indulging in illegal money lending activities. The complainant has not stated

the date when the alleged transaction was executed between the parties and as to when the accused was supposed to deliver the goods. There is no evidence to substantiate the fact that there was any such transaction regarding the delivery of goods and advance payment being made by the complainant to the accused. In the evidence, the complainant has stated that he do not remember the date on which he had approached the accused for purchase of the materials. He could not depose the nature of exact transaction and the date on which the advance payment was made by the complainant to the accused. There is no evidence to corroborate the fact that the complainant had withdrawn the amount from his bank account for handing over the same to the accused. In the aforesaid circumstances, trial Court was pleased to observe that the complainant has not been able to establish his case and therefore acquitted the accused.

8 In the light of the aforesaid circumstances, and the evidence on record, I do not find any reason to interfere in the impugned judgment and order passed by the trial Court while acquitting the respondent – accused. No case for grant of leave is made out.

9 Hence, I pass the following order:

:: <u>O R D E R</u> ::

(i) Criminal Application No.967 of 2012 stands dismissed.

(**PRAKASH D. NAIK, J.)**