

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.319 OF 2017

M/s.Omkar Trading Co.
Through Prop.Gopal H. Lohar
Versus

M/s.Kamal Engineering Works
Through Prop.Ramkishan J. Kanojiya
& Anr. ...Respondents

Mr.Harshad M. Inamdar for the Applicant.

Mrs.P.P. Shinde, APP for the Respondent-State.

CORAM : SMT.BHARATI H. DANGRE, J.

DATE : 03rd SEPTEMBER 2018

P.C.

1. Heard, Shri.Harshad Inamdar, learned counsel for the applicant.

The learned counsel for the applicant would invite attention of this Court to the order passed by the Metropolitan Magistrate, Mazgaon, Mumbai on 26.5.2015 by which the accused have been acquitted for the offences punishable under Section 138 of the Negotiable Instrument Act. The specific plea and the ground raised in the application on the basis of which a leave is sought to file the present appeal is enumerated in ground No.(o),(p) and (q)

of the said application. The applicant has given the details of the amount which was recoverable and has also referred to the details of the cheques that have been issued.

3. Perusal of the judgment passed by the Metropolitan Magistrate would reveal that a finding is recorded by the Court that the complainant had failed to prove that the cheques were issued by the accused for the discharge of existing debt and liability. This finding is recorded on the basis of the figures that have been mentioned in the notice that was issued by the complainant and to which there is no response by the accused. The learned Metropolitan Magistrate after raising a presumption under the Negotiable Instrument Act have recorded a finding that the accused have rebutted the same. The finding that is recorded is that the fact in respect of a liability of an amount of Rs.3,66,433/- is not restricted by the complainant in the notice but rather the claim is made for an amount which is much more higher than the amount of the existing liability. Considering this factum to be in favour of the accused and taking it that the accused has rebutted the presumption, the learned Magistrate has acquitted the accused. The learned counsel is justified in submitting that there is an error in the calculation that has been made by the Metropolitan Magistrate and

he concedes that the figures in the notice have been erroneously mentioned. However, when he stood in the witness box and when he was subjected to cross-examination he has given the details and there is no rebuttal to that effect. In view of the said submission, arguable points arise in the present appeal and the matter requires consideration. Leave to appeal granted. Appeal is directed to be registered.

4. Issue notice to the respondent No.1, returnable on 01.10.2018. The learned Additional Public Prosecutor waives service on behalf of Respondent No.2.

(SMT.BHARATI H. DANGRE, J.)

Nilam
Santosh
Kamble

Digitally signed by
Nilam Santosh
Kamble
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