

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION No. 544 OF 2016
WITH
CRIMINAL APPLICATION No. 564 OF 2016

M/s. Harsh Traders and Ors.Applicants
Vs.
M/s. Agarwal Agencies and Ors.Respondents

Mr. Vivekanand S. Tadake for Applicants
Mrs. M.R. Tidke -APP for the State

CORAM : PRAKASH D. NAIK, J.
DATE : 10th JANUARY, 2018.

P.C. :-

1. This criminal revision application has been preferred challenging the judgment and order dated 1st July, 2016 passed by the Additional Sessions Judge, Pune in Criminal Appeal No. 437 of 2012.
2. The Applicants were prosecuted for an offence punishable under Section 138 of the Negotiable Instruments Act in respect to the complaint filed by Respondent No.1 before the Court of Learned Judicial Magistrate, First Class, Pune vide SCC No. 41298 of 2008.
3. The case of the Complainant is that the accused had purchased material from the Complainant on credit vide Bill/ Invoice No. 3592 dated 29th September, 2008 for Rs.2,66,546/-. In discharge of the liability, the accused issued a cheque dated 24th October, 2008 for an amount of Rs.2,66,546/-. The cheque was dishonoured on 15th November, 2008. The

Complainant issued a demand notice dated 27th November, 2008 and, thereafter filed a complaint before the Trial Court.

4. After recording the evidence, the Trial Court came to the conclusion that the Complainant has succeeded to prove that the material of Rs.2,66,546/- was supplied to the accused as per tax invoice/bill (exh. 38). For repayment of the same, the accused issued cheque. The accused had also examined himself in support of his case.

5. The learned JMFC, Pune vide judgment and order dated 4th December, 2012 convicted the Applicants for an offence punishable under Section 138 of the Negotiable Instruments Act. The accused were sentenced to undergo simple imprisonment for one month and to pay fine of Rs.3,50,000/- within four weeks from the receipt of the copy of the judgment and, in default, to undergo simple imprisonment for six months. It was further directed that on depositing the fine of Rs.3,40,000/- shall be paid to the complainant as compensation.

6. The Applicants challenged the said judgment and order by preferring Criminal Appeal No. 437 of 2012. During the pendency of the appeal, the Applicants/Accused had deposited an amount of Rs. 1,50,000/- before the Appellate Court. Vide judgment and order dated 1st of July, 2016, the Court partly allowed the appeal by modifying the judgment and order of conviction passed by the Trial Court. The Applicants/Accused were

convicted for the offence punishable under Section 138 of the Negotiable Instruments Act and the accused was sentenced to suffer till rising of the Court. The accused was directed to pay compensation of Rs.1,30,000/- to the Complainant within three months and, in default, to suffer simple imprisonment for one month. It was further directed that the amount of Rs.1,50,000/- deposited by the Applicants/Accused before the Appellate Court be paid to the Complainant.

7. The learned Advocate for the Applicants fairly pointed out that the Applicants were also convicted by the same Court in SCC No. 41297 of 2008 vide judgment and order dated 4th December, 2012 and the parties in both the proceedings are same.

8. The Applicants had also challenged the said order of conviction by preferring an appeal before the Sessions Court which was partly allowed the appeal vide judgment and order dated 1st July, 2016. The Applicants had preferred Criminal Revision Application No. 543 of 2016 challenging the said judgment and order which has been disposed of vide judgment and order dated 12th June, 2017.

9. While deciding the Criminal Revision Application No.543 of 2016, this Court has observed that the only point which is argued in the criminal revision application is that the cheques were issued as security in relation to transactions of sale and purchase of goods and that no goods have been

delivered by the Complainant to the Accused. It was further argued that the cheques were not required to be honoured since the cheques represented the amounts/value of the goods which were sold but which were not delivered to the Accused. The Court further observed that in the said proceedings, the Trial Court found that the Accused have failed to establish the plea of non-delivery of the goods despite opportunities being given to them to cross examine the complainant. The Court referred to the observation of the Trial Court in paragraph 18 of the impugned judgment and order dated 4th December, 2012. It was further observed that the complainant had produced the relevant documents including the bill and relevant entries pertaining to the transaction and the cross examination does not appear to have dislodged the evidence produced by the complainant. The Court, therefore, observed that there is no reason to interfere with the order passed by the Appellate Court.

10. I have perused the impugned judgment and the material on record. This case is identical with the Criminal Case arising out of SCC No. 41297/2008 which is the subject matter of the Criminal Revision Application No. 543 of 2016. Identical observations are made in the present case by the Trial Court. Paragraph 18 of the judgment of the Trial Court and present proceedings also refers to the fact that the Accused have failed to bring on record any fruitful material during the cross examination

to establish the defence that the material mentioned in bill (Exhibit 38) were never received by the accused. In the present case also the Appellate Court has taken a lenient view and reduced the sentence of imprisonment by directing the accused to suffer till rising of the court and was directed to pay compensation of Rs.1,30,000/- to the complainant. Both the cases are identical in nature and considering the facts on record, no interference is called for in the impugned judgment. Hence, I pass the following order.

ORDER

- (i) The Criminal Revision Application No.544 of 2016 is dismissed.
- (ii) In view of disposal of the Criminal Revision Application, Criminal Application No. 564 of 2016 does not survive and the same is also disposed of.

[PRAKASH D. NAIK, J.]