

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Criminal Application (APPA) No.698 of 2017
(Hariom s/o Yograj Sahani .vs. National Buld. Construction and ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders.
and Registrar's orders

Mr. G.L. Bajaj, Advocate for Applicant.
Mr. R.M. Sharma, Advocate for Respondents

CORAM : Manish Pitale, J.
DATED : June 15, 2018.

1. This is an application seeking leave to appeal to challenge judgment and order dated 31.05.2017 passed by the Court of Judicial Magistrate First Class, Nagpur (Special Court for the offences punishable under Section 138 of the Negotiable Instruments Act, 1881) i.e. the trial Court herein, whereby the respondents have been acquitted for offence punishable under Section 138 of the said Act.

2. The case of the applicant (original complainant) in brief was that he had carried out construction work for the respondents for certain structures of road at Katol, for which the total amount payable to the applicant was Rs.1,05,06,899/- and deducting the amount already paid by the respondents, according to the applicant, the balance amount due was Rs.19,87,628/-.

3. It was the case of the applicant that in order to discharge part of the said liability, the respondents had handed over a cheque for an amount of Rs.7,69,795/- to him on 5.4.2007 and that the said

cheque was dated 7.4.2007. According to him when the said cheque was deposited on 16.08.2007, it was returned by the Bank with a memo stating that it stood dishonoured for the reason "funds insufficient". On this basis, after issuing notice and completion of the requirements under the aforesaid Act, the applicant filed a complaint under Section 138 of the aforesaid Act against the respondents.

4. The respondents pointed out in their defence, as was their stand in the reply to the notice that was issued by the complainant, that the applicant himself had approached them and stated that the aforesaid cheque dated 7.4.2007, which stood dishonoured, had been lost, damaged or destroyed and that therefore, fresh cheque was required to be issued by the respondents. It was the stand of the respondents that in this backdrop they issued two cheques dated 7.4.2007 one for an amount Rs.6,00,000/- and the other for an amount of Rs.1,69,795/- and that the said two cheques together amounted to Rs.7,69,795/-, which was the amount for which the initial cheque had been issued. It was brought on record by the respondents that the aforesaid two cheques were indeed encashed by the applicant on 7.4.2007 and 10.4.2007. It was also pointed that subsequently a cheque dated 20.06.2007 for an amount of Rs.5,08,574/- had also been issued by the respondents to the applicant, which had been encashed by him.

5. On the basis of this material, it was contended on behalf of the respondents that when the subsequent two cheques dated 7.4.2007 for the exact

amount for which the earlier cheque had been issued, had been encashed and even the cheque dated 20.06.2007 had also been encashed by the applicant, it was strange that the applicant had deposited the initial cheque dated 7.4.2007 (which stood dishonoured) much later on 16.8.2007 and thereafter filed the complaint under Section 138 of the aforesaid Act. On this basis, it was contended that there was sufficient material to show that the cheque that was subject matter of complaint, could not be said to be in respect of any legal debt or liability and that, therefore, the complaint deserved to be dismissed.

6. A perusal of the impugned judgment and order shows that the trial Court has taken into consideration all the aforesaid facts in detail. It is recorded in the impugned order that the amounts for which the subsequent two cheques were issued added up to the exact amount for which the cheque in question had been earlier issued, thereby showing that the stand taken by the respondents appeared to be correct. It was also found by the Court below in the impugned order that the details regarding balance due from the respondents on the basis of material placed on record on behalf of the applicant could not be ascertained because there was difference between the work orders filed on record and the amounts due claimed on the basis of statement of progress of work by the applicant. The Court also noted that there was absence of sufficient material in the form of log book maintained about the work in progress, to come any conclusion regarding the balance amount and liability claimed by

the applicant.

7. On this basis, the Court below has found that if the amounts placed on record that were paid by the respondents to the applicant are taken into consideration, it was clear that the applicant had not come before the Court by stating the entire facts relevant to the present case. On this basis, the Court below has found that the story put forth by the applicant appears to be doubtful.

8. A perusal of the material on record demonstrates that the view taken by the Court below is a possible view and that the applicant herein has failed to make out sufficient grounds for grant of leave to appeal against the said judgment and order of the trial Court.

9. Accordingly, this application is rejected as being without any merits.

JUDGE

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