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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 57 OF 2002

Rasiklal Manilal Shah and Ors. **... Applicants.**

Versus

Central Bank of India and Ors. **... Respondents.**

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Mr. Girish Kulkarni i/b Ms. Mrunmai Kulkarni for the Applicants.
Mr. Sharan Basappa i/b Rathina Maravarman for the Respondent No.1.
Mr. R. M. Pethe, APP for Respondent – State.

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CORAM : A. S. GADKARI, J.
DATE : 16th OCTOBER, 2019

P. C. :

1. By the present Revision under Section 397 of the Code of Criminal Procedure, the applicants/original accused Nos. 1 to 3 have questioned the correctness, legality and propriety of the impugned Judgment and Order dated 11th September 2001 passed by the learned Additional Sessions Judge, Greater Mumbai, in Appeal No. 171 of 2000, dismissing the said appeal and confirming the Judgment and Order dated 19th September 2000 passed by the learned Metropolitan Magistrate, 14th Court, Girgaum Mumbai in CC No. 106/S/1997 convicting the applicants for offences punishable under Section 420, 465, 471 read with Section 109 of the Indian Penal Code and is sentenced to suffer maximum rigorous imprisonment for six months.

2. Heard Mr. Kulkarni, learned counsel for the applicants, Mr. Sharan Basappa for the respondent No.1 – Bank and Mr. Pethe, learned

APP for respondent No.2 – State. Perused the record.

3. The record reveals that, the respondent No.1 had filed the aforestated complaint bearing No.CC/106/S/1997 alleging offences punishable under Section 420, 465, 471 read with Section 109 of the Indian Penal Code, in the Court of Metropolitan Magistrate, 14th Court, Girgaum Mumbai, against in all four accused persons. The accused No.4 – Niranjan Mehta, the then Branch Manager of the complainant's Bank at Null Bazar Branch has expired during the pendency of trial and therefore the case as against him stood abated.

The case of the complainant in nutshell is that the applicants were the partners of M/s Rasiklal Kantilal and Company. The firm of applicants was availing bill purchase facility of the complainant – Bank since the year 1974. Under the said facility, bills of exchange or drafts payable on presentation (sight bills) drawn by the said firm on their upcountry customer parties for the value of the goods sold and supplied and made payable to the complainant-Bank having its branch at Null Bazar, used to be submitted in the bank for purchase under the scheme of Bill purchase facilities. The said sight bills were required to be accompanied by the invoice of the goods and the consignee's copy of the Motor Transport Receipt (MTR) duly endorsed in favour of the bank. That the applicants by a letter dated 28th June 1979 forwarded to the complainant a sight bill dated 28th June 1979 for Rs. 1,68,776/- (Rupees One Lack Sixty Eight Thousand Seven Hundred Seventy Six Only) for availing the said facility. The bill was drawn on M/s Mather and Platt (India) Ltd., Chinchwad, Pune. The Bank accordingly gave credit of Rs.1,68,776/- to the firm of the applicants on the same date. The Bank thereafter presented the said bill to collect amounts from M/s Grindlays Bank Ltd., Fort, Mumbai i.e. Bankers of the drawee of the said Bill i.e. M/s Mather and Platt (India) Ltd., Chinchwad, Pune. The said Grindlays Bank Ltd. informed the complainant-bank that, the drawee M/s Mather and Platt (India) Limited had refused to honour the said bill of exchange and to give payment for the said sight bill on the ground that, they same was not prepared as per their proforma documents. The complainant therefore realized that the applicants in conspiracy with original accused No.4 had committed the said act of cheating by forging and fabricating valuable documents of the bank and other related documents. As per the complaint itself, the said offence took place between June 1979 and September 1979.

After receipt of the complaint, the Trial Court issued process against the accused persons. The Trial Court thereafter recorded evidence before framing of charge. Applicants pleaded not guilty and claimed to be tried. The defence of the applicants, was that the dispute involved herein is of civil nature and the Bank had already filed a civil suit for recovery of the said amount. That the present complaint has been filed to pressurize the applicants to settle the said civil dispute and to make payment to the Bank. The learned Trial Court thereafter framed points for its consideration. The complainant-Bank in support of its case examined in all four witnesses. Sufficient opportunity was granted to the applicants to cross-examine the witnesses and to lead evidence in support of their defence. The Trial Court after recording evidence and hearing the parties to the said complaint has convicted and sentenced the applicants by its Judgment and Order dated 19th September 2000.

The Criminal Appeal No. 171 of 2000 preferred by the applicants has been dismissed by the learned Additional Sessions Judge, Greater Mumbai by its Judgment and Order dated 11th September 2001 as noted herein above.

4. At this stage, a useful reference can be made to the decision of the Supreme Court in the case of *State of Gujarat Vs. Afroz Mohammed Hasanfatta reported in AIR 2019 SC 2499,* wherein, while elaborating the provisions of Section 397 of Cr. P.C. the Supreme Court has held that, while hearing the Revision under Section 397 of Cr. P.C., the High Court does not sit as an Appellate Court and will not reappreciate the evidence unless the Judgment of the lower Court suffers from perversity.

5. A minute perusal of the material available on record and the impugned Judgments and Orders passed by the lower Courts indicates that, the accused persons have failed to rebute the charges leveled against them by leading substantial evidence in that behalf. A perusal of evidence further indicates that, the complainant has succeeded in establishing allegations made against the applicants and the offences charged against

them.

6. The facts mentioned herein above are the admitted and established facts on record. At this stage, Mr. Kulkarni, learned counsel for the applicants fairly conceded to the fact that, the complainant has succeeded in establishing the guilt of the applicants.

In view thereof, the conviction of the applicants under Section 420, 465, 471 read with Section 109 of the Indian Penal Code is hereby confirmed.

7. This leads me to consider the sentence imposed upon the applicants by the Trial Court and confirmed by the Appellate Court.

Mr. Kulkarni submitted that, as per the complaint itself offence in question was committed by the applicants during the period from June 1979 to September 1979. That the applicants were about 30 to 36 years of age in 1979. As of today, the applicant No.1 is aged about 76 years and the other two applicants are also above 70 years of age. He further submitted that, taking into consideration the fact that, the applicants are senior citizens, leniency may be shown to them and at their old age, they may not be sent to jail for undergoing the balance of sentence.

The learned counsel for the complainant – Bank fairly submitted that, appropriate orders in the interest of justice may be passed in that behalf.

8. The record indicates that, due to the act of the applicants, the

complainant – Bank has suffered a loss of Rs.1,68,776/-. It is an admitted fact on record that the applicant No.1 is, as of today, 76 years of age. The other applicants are also senior citizens and are above 70 years of age. Taking into consideration the advance age of the applicants, this Court is of the considered view that, at this stage, it will not be appropriate to send them behind the bars to undergo the balance of sentence. The principal offence alleged against the applicants is under Section 420 of the Indian Penal Code which is a compoundable offence under Section 320 of the Cr. P. C.

9. After taking overall view of the matter, this Court is of the considered opinion that, instead of sending the applicants behind the bars to undergo the imprisonment at this stage, as noted above, it would be appropriate to enhance the fine amount imposed upon them by the trial Court and the sentence of imprisonment can be waived.

10. In view of the peculiar facts and circumstances of the present case, the applicants are directed to pay fine of Rs. 1,00,000/- (Rupees One Lakh) each to the complainant-Bank within a period of four weeks from the date of uploading of the present Order on the High Court website. The sentence of imprisonment imposed upon the applicants by the Trial Court and confirmed by the Appellate Court is hereby waived and set aside.

11. Revision Application is partly allowed in the aforesaid terms.

(A. S. GADKARI, J.)