IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION (ALP) NO.497 OF 2018

Mr. Girish Suresh Advani .... Applicant

Vs.

1. Mr. Bharat Shivshankar Vyas
2. State of Maharashtra .... Respondents

Mr. Jaideep Thakker for Applicant.
Mr. S.V. Gavand, APP for the State.

Coram : NITIN W. SAMBRE, J.
Date : 13th December 2019

P.C.:

1. The Judicial Magistrate First Class (7th Court), Thane acquitted the accused (respondent no.1) vide judgment and order dated 23rd September, 2017 for an offence punishable under Section 138 of Negotiable Instruments Act. As such, this application under Section 378 of Code of Criminal Procedure for grant of leave to appeal.

2. The submissions are, the learned Magistrate has committed an error in appropriately appreciating the evidence of the applicant-original complainant on record and also other material on record, recorded in the statement of accused under Section 313 of Cr.P.C. The

learned counsel would urge that the learned Magistrate misinterpreted the piece of evidence in the form of income-tax returns of the applicant as an independent document and there is material to order conviction of the accused as presumption under Sections 139 and 118 of Negotiable Instruments Act is totally ignored. He also took me through the observations made by the learned Magistrate so as to submit that the appreciation of the evidence, there is re-appreciation of the entire evidence.

3. The prosecution of the respondent-accused is based on Exhibit 17, the cheque for an amount of Rs.20.00 Lakhs.

4. The said cheque was issued on 23rd June, 2014 claimed to have been dishonoured on 25th June, 2014.

5. Before the aforesaid transaction, it is claimed that an amount of Rs.15.00 Lakhs was given to the accused during February 2014 to March 2014 and remaining amount of Rs.5.00 Lakhs in cash at the end of April 2014.

6. So as to substantiate the aforesaid payment, the applicant has relied on the documentary evidence, Exhibit 19 and 20, which are income-tax returns for the years 2014-2015 and 2015-2016.

7. It is claimed that an amount of Rs.10.00 Lakhs, which was returned by the accused was against the transaction of September, 2013 and that being so, the learned Magistrate misinterpreted and misread the evidence on record.

8. The fact remains that the complainant himself has come out with the theory that the total amount of Rs.20.00 lakhs (Rs.15.00 + Rs.5.00 Lakhs) was paid in between February 2014 to April 2014, whereas an amount of Rs.10.00 Lakhs was received by the complainant at the end of April 2014, which cheque was encashed by the complainant in the beginning of May 2014.

9. The aforesaid transaction prima facie urge/reached serious than as records, where the amount as claimed by the applicant was advanced to the accused that too in cash as reflected in Exhibit 29. Exhibit 19 and 20 are the income-tax documents of the applicant,

which are disbelieved by the learned Magistrate as there is no corroborative evidence in support thereof. The learned Magistrate went on observing that the aforesaid two documents are prepared by the complainant unilaterally to which the accused is not a party to mean that there was no confirmation from the accused side about the outstanding debt of Rs.20.00 Lakhs.

10. It also seen illogical that the accused having accepted an amount of Rs.20.00 Lakhs till the end of April 2014 and during the same period, he returned Rs.10.00 Lakhs out of the earlier transaction.

11. If accused would have paid Rs.10.00 lakhs for returning the same to the complainant as claimed by the complainant, then he would either ask for extension of repayment to the extent of Rs.10.00 Lakhs and not additional loan.

12. As far as the refund of amount of Rs.10.00 Lakhs is concerned, it is claimed to have reflected in the income-tax returns. It is also brought on record by the accused in cross-examination of the complainant, that the amount of Rs.6.00 Lakhs was paid earlier,

through four cheques drawn in favour of the accused from different accounts other than that of the complainant.

13. During the cross examination of applicant, the applicant remained evasive about answering of issuance of said cheques which fact is suppressed by the complainant before the court below so also before this Court.

14. In the aforesaid background, the acquittal of the accused appears to be just and proper. No case is made out grant of leave. Leave Refused.

(NITIN W. SAMBRE, J.)