IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 355 OF 2018
WITH
CRIMINAL APPLICATION NO. 27 OF 2018

Mr. Jasbirsingh Amriksingh Anand … Applicant

V/s.

Digambar Anandrao Pingale & Anr. … Respondents

Ms. Rukmini Khairnar for the Applicant.
Mr. S.V. Gawand, APP for the Respondent/State.

CORAM: PRITHVIRAJ K. CHAVAN, J
RESERVED ON : 18th DECEMBER 2019
PRONOUNCED ON : 07th JANUARY 2020

: ORDER :

1. These are the applications seeking special leave to appeal against the impugned common Judgment and order in Criminal Appeal Nos. 84 of 2014 and 85 of 2014 passed by the Sessions Judge, Nashik on 04.06.2016 by which Respondent No.1 came to be acquitted of the offence punishable under Section 138 of the Negotiable Instruments Act.

2. A few facts germane for disposal of these applications can be summarized thus:

3. The Applicant deals with a transport business under the name and style as J.A. Anand Transporters, who is also an authorized agent and incharge of clearing and forwarding agent of ACC Cement Company, Nashik. It was the responsibility of the Applicant to ensure receipt of consideration of the goods sold to the customers by ACC Cement Company. In lieu of the same the Applicant would get commission @ Rs.1.5 to Rs.2 per bag of cement.

4. Respondent No.1 purchased cement from ACC Company, *inter alia,* had drawn two cheques on account of Proprietor, Sainath Enterprises. On deposit, the cheques were dishonoured for the reasons “insufficient fund”.

5. Since, the Applicant was responsible for ensuring payment of money for the cement supplied to Respondent No.1 and as Respondent No.1 did not pay the money, the ACC Company deducted the sum from the monthly clearing and transport charges of the Applicant.

6. Admittedly, the two cheques issued by Respondent No.1 towards the consideration of the purchase of the cement came to be dishonoured. Two cheques bearing No. 342841 and 342842

were of Rs.2,90,000/- each drawn on Bank of Maharashtra dated 20.02.2006 and 20.03.2006 respectively.

7. Despite receipt of statutory notice by registered post dated 22.08.2006, Respondent No.1 had not complied with the same which resulted in filing a complaint against him in the Court of Chief Judicial Magistrate, Nashik under Section 138 of the Negotiable Instruments Act bearing Summary Case Nos.7195 of 2006. After the trial, the learned Chief Judicial Magistrate decided both the Summary Cases bearing Nos. 7195/2006 and 7196/2006 convicting the Respondent No.1 and sentenced him to suffer simple imprisonment for one month, *inter alia*, directing compensation to be paid to the tune of Rs.2,90,000/-, in default to suffer simple imprisonment for one month.

8. Aggrieved with the Judgment of conviction, Respondent No.1 preferred appeals bearing Nos. 84 of 2014 and 85 of 2014 in the Sessions Court at Nashik which came to be allowed by a common impugned Judgment and order.

9. Despite service, none appeared for Respondent No.1. I heard Ms. Khairnar, the learned Counsel for the Applicant. At the outset, the learned Counsel for the Applicant drew my

attention to the judgment delivered by the Chief Judicial Magistrate by contending that the learned Trial Court has rightly appreciated the facts and evidence on record including the fact that the Respondent No.1 has failed to rebut the presumption under Section 139 of the Negotiable Instruments Act. With the assistance of the learned Counsel for the Applicant, I have meticulously gone through the evidence of the witnesses as well as the evidence of the defence witness i.e. Respondent No.1.

10. A power of attorney namely Harjitsingh Amriksingh Anand has testified on behalf of the complainant Jasbirsingh. In his cross-examination the power of attorney gave certain vital admissions which are sufficient to construe that Respondent No.1 has succeeded in rebutting the presumption under Section 139 of the Negotiable Instruments Act to a considerable extent. The cross-examination would reveal, amongst other facts, the fact that Applicant is an authorised agent of ACC Company, but has not tendered any documentary evidence to that effect. There is no document on record to indicate that there is a specific letter of appointment in favour of the Applicant substantiating the fact that he has been authorised to recover the amount of consideration from the customers. The Power of Attorney even could not specify the date and the amount of goods sold as well as its bill

due to the Applicant from Respondent No.1. Undisputedly, the amount was due to ACC Company and not to the Applicant.

11. The cross-examination further revels that the Applicant has not mentioned about the amount due from the Respondent in the income tax returns, though, the Applicant regularly files the returns. If that being so, one fails to understand as to why the subject cheques were issued in the name of the Applicant in stead of ACC Company.

12. In his defence evidence, Respondent No.1 in his affidavit in lieu of examination-in-chief deposed that nothing is due to the ACC Company, for, he always used to tender post dated signed cheques in anticipation of the purchase order and the company used to encash the cheque as per the order placed by Respondent No.1. It is deposed that few blank signed cheques were lying with the Applicant, of which the Applicant took disadvantage and fraudulently filed false cases against him by misuse of the said cheques. It is made clear by Respondent No.1 in his evidence that except his signature, rest of the contents over the cheques were not in his handwriting, but was written by the Applicant. It is also testified that the Applicant had never cleared the dues of ACC Company on his behalf and therefore, there is no question

of he being liable to pay anything to the Applicant. There is absolutely no mentioned in the books of account of the Applicant.

13. It is quite interesting to go through the cross-examination of Respondent No.1 on behalf of the Applicant. It has been reiterated in the cross-examination of Respondent No.1 that there was no transaction of any kind between the Applicant and Respondent No.1 which strengthen and fortifies the fact that the transactions were not between Respondent No.1 and Applicant but were between the Respondent No.1 and ACC Company. The cross further substantiated the fact that as per the instructions of ACC Company, Respondent No.1 had issued signed blank cheques to the Applicant. The Applicant could have examined concerned witness or authorised person from ACC Company in order to rebut or falsify the contention of Respondent No.1. This has been brought in the cross-examination of Respondent No.1. The cross further substantiated the fact that Respondent No.1 used to issue blank post dated cheques to the Applicant and that he had done so on 5 to 6 occasions earlier as per instructions from the ACC Company.

14. Thus, it can be seen that there was no legally enforceable debt or liability when the subject cheques were issued, which

were blank and post dated and were obtained by the ACC Company through the Applicant. There was no privity of contract between the Applicant and Respondent No.1 qua the purchase of cement bags.

15. The learned Sessions Judge, Nashik, in the impugned judgment has rightly pinpointed the facts as to how Respondent No.1 has successfully rebutted the presumption and therefore, I do not find any merit in the present applications seeking special leave to appeal.

16. Consequently, leave is refused and the applications are rejected.

(PRITHVIRAJ K. CHAVAN, J.)