**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CRIMINAL APPELLATE JURISDICTION**
**CRIMINAL APPLICATION NO. 381 OF 2019**
**WITH**
**CRIMINAL APPLICATION NO.384 OF 2019**

M/S. ROHIT & COMPANY ….Applicant.
V/s
THE STATE OF MAHARASHTRA & ORS …..Respondent

Mr. Sathyanarayanan for the Applicant.
Mr. M. G. Patil, APP for the Respondent/State.

**CORAM: NITIN W. SAMBRE, J.**

**DATE: DECEMBER 09, 2021**

P.C.:-

1] Heard.

2] While assailing the order of acquittal and seeking leave to appeal, Complainant relied on admissions given by Respondent/Accused in cross-examination on Exhibit-90 – Balance Sheet wherein debt was admitted.

3] In the aforesaid backdrop, submission of learned Counsel for the Applicant are, initial burden was duly discharged and there is enough material to conclude that cheques were issued for legally enforceable debt. He has further claimed that presumption under Sections 118 and 139 of the Negotiable Instruments Act are ignored by the court below and as such there is an error. Support is drawn from the judgment of the Apex court in the matter of *Rohitbhai Jivanlal Patel vs. State of Gujarat and Anr* reported in **(2019) 18 SCC 106**, particularly paras 20 and 21 which read as under:-

> "20. Hereinabove, we have examined in detail the findings of the Trial Court and those of the High Court and have no hesitation in concluding that the present one was clearly a case where the decision of the Trial Court suffered from perversity and fundamental error of approach; and the High Court was justified in reversing the judgment of the Trial Court. The observations of the Trial Court that there was no documentary evidence to show the source of funds with the respondent to advance the loan, or that the respondent did not record the transaction in the form of receipt of even kachcha notes, or that there were inconsistencies in the statement of the complainant and his witness, or that the witness of the complaint was more in know of facts etc. would have been relevant if the matter was to be examined with reference to the onus on the complaint to prove his case beyond reasonable doubt. These considerations and observations do not stand in conformity with the

presumption existing in favour of the complainant by virtue of Section 118 and Section 139 of the NI Act. Needless to reiterate that the result of such presumption is that existence of a legally enforceable debt is to be presumed in favour of the complainant. When such a presumption is drawn, the factors relating to the want of documentary evidence in the form of receipts or accounts or want of evidence as regards source of funds were not of relevant consideration while examining if the accused has been able to rebut the presumption or not. The other observations as regards any variance in the statement of complainant and witness; or want of knowledge about dates and other particulars of the cheques; or washing away of the earlier cheques in the rains though the office of the complainant being on the 8th floor had also been irrelevant factors for consideration of a probable defence of the appellant. Similarly, the factor that the complainant alleged the loan amount to be Rs. 22,50,000/- and seven cheques being of Rs. 3,00,000/- each leading to a deficit of Rs. 1,50,000/-, is not even worth consideration for the purpose of the determination of real questions involved in the matter. May be, if the total amount of cheques exceeded the alleged amount of loan, a slender doubt might have arisen, but, in the present matter, the total amount of 7 cheques is lesser than the amount of loan. Significantly, the specific amount of loan (to the tune of Rs. 22,50,000/-) was distinctly stated by the accused-appellant in the aforesaid acknowledgment dated 21.03.2017."

"21. On perusing the order of the Trial Court, it is

> noticed that the Trial Court proceeded to pass the order of acquittal on the mere ground of 'creation of doubt'. We are of the considered view that the Trial Court appears to have proceeded on a misplaced assumption that by mere denial or mere creation of doubt, the appellant had successfully rebutted the presumption as envisaged by Section 139 of the NI Act. In the scheme of the NI Act, mere creation of doubt is not sufficient."

4] If the aforesaid submissions are appreciated in the light of the position of law that Applicant/complainant is required to discharge his initial burden for considering presumption in favour of the Applicant, provided under Sections 118 and 139 of the NI Act, it has to be noted that P.W. 1, a star witness of the Applicant was unable to come on record to claim that there was business agreement in relation to supply of goods with the Complainant-Company and he was also not specific about cheques were received towards security. Once the complainant through his witness has failed to discharge his initial burden of supply of goods and business agreement towards the same so also issuance of cheques towards discharge of such liability by the Respondent, Court below was right in not considering the case of the Applicant as the Applicant has not discharged the initial burden. Reliance placed on the judgment of the Apex Court in *Rohitbhai Jivanlal Patel* (supra) will be of hardly any assistance in the aforesaid backdrop.

5] Magistrate, in the present case, has not gone into the issue of financial resources of the Applicant/Complainant-Company but has considered evidence of the Complainant as it is to infer whether initial burden was discharged and as such rightly reached to the conclusion that Applicant has failed to discharge his burden. In the aforesaid backdrop, support drawn from the judgment of the Apex Court in the matter of *Rohitbhai Jivanlal Patel* (supra) is wholly misplaced. The view expressed by the Court below is based on appreciation of evidence.

6] As such, no case for gran ot leave is made Out. Applications stand rejected.

**( NITIN W. SAMBRE, J. )**