IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
9 CRIMINAL APPLICATION NO.4047 OF 2017

PRAVIN S/O. RATNAKAR GHUGE
VERSUS
DHARMARAJ KISHANRAO KHANDARE

Mr. Hanmant V. Patil, Advocate for the applicant
Mr. Shrikant S. Londhe, Advocate for the respondent

CORAM : ANIL L. PANSARE, J.
DATE : 25th July, 2022

P. C.

1. Heard.

2. The applicant has filed present application under Section 378(4) of the Code of Criminal Procedure seeking leave to file an appeal against the judgment and order of acquittal dated 23-06-2017 passed by the learned Judicial Magistrate, First Class, Hingoli in SCC No. 801 of 2014 for the offence punishable under Section 138 of the Negotiable Instrument Act, 1981 (for short

'the N.I. Act').

3. I have considered the rival submissions. The trial court has acquitted the respondent/accused mainly on the ground of non-compliance of Sections 18 and 19 of the Bombay Money-Lenders Act, 1946.

4. I have gone through the relevant provisions viz Sections 18, 19 and 21 of the Bombay Money-Lenders Act which have been referred to and relied upon by the learned Judge to held that no court can proceed with the case initiated by the money lenders without complying Sections 18 and 19 of the Bombay Money-Lenders Act. This finding appears to be contrary to the Section 21 of the Bombay Money-Lenders Act. Section 21 provides as under:-

> *"Section 21:-* ***Procedure of court in suit regarding loans***
>
> *Notwithstanding anything contained in any law for the time being in force*

in any suit to which this act applies-

(a) a court shall, before deciding the claim on merits, frame and decide the issue whether the money-lender, has complied with the provisions of Section 18 and 19;

(b) if the court finds, that the provisions of section 18 or section 19 have not been complied with by the money-lender, it may, if the Plaintiff's claim is established, in whole or in part, disallow the whole or any portion of the interest found due, as may seem reasonable to it in the circumstances of the case and may disallow costs."

5. Thus, in a civil suit, if the plaintiff/ money lender is able to establish his claim, only interest and cost may not be allowed for non-compliance of Sections 18 and 19. It does not bar filing of the suit or criminal complaint under Section 138 of the N.I. Act. The non-compliance of the provision may have consequences of cancellation of Money Lenders license in terms of the provision of the Bombay Money-Lenders Act.

6. The trial court is otherwise convinced that the necessary ingredients to attract the provisions of N.I. Act have been complied with.

7. The another ground for acquittal is that the cheque issued is of the year 2014. This cheque is not CTS (Cheque Truncation System). The trial court held that the Reserve Bank of India has declared that existing /old cheques will not be valid after 31-12-2012. This finding has been rendered without there being any case to that effect made out by the respondent/accused. The circular or notification of the Reserve Bank of India is not on record. If at all it is the case of the accused that the cheque issued was of old transaction, it was for him to lead the evidence and discharge the burden, once the trial court found that the necessary ingredients of the offence punishable under Section 138 of the N.

I. Act have been made out.

8. In that view of the matter, the applicant has made out an arguable case. It will be therefore, appropriate to grant leave to file an appeal. The application is accordingly allowed. Leave as sought by the applicant is granted. The criminal appeal be registered and stands admitted.

9. Issue notice to the respondents. The learned Advocate Mr. Londhe, waives service of notice on behalf of the respondent No.1.

[ANIL L. PANSARE, J.]

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