

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 5873 OF 2015

Gem Sugars Ltd. Kundarigi
Through its authorized Agent
Dayanand Krishna Patil

.. Applicant

Versus

Murali Abhaji Survase

.. Respondent

Mr. Santosh N. Patne, Advocate for the Applicant.
Mr. Sidhesh V. Jadhwar, Advocate for sole Respondent.

CORAM : ANIL L. PANSARE, J.

DATED : 22nd JULY, 2022.

PER COURT:-

1. Heard.
2. By present application, the applicant - original complainant is seeking relief to file an appeal against the judgment and order dated 01.11.2014 passed by the learned Additional Chief Judicial Magistrate, at Majalgaon, Dist. Beed in S.C.C. No. 368 of 2005. The criminal case was filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').
3. Having heard both the sides and having gone through the record

placed before me, it is admitted that the respondent – accused, a sugarcane labour supplier (popularly known as Mukadam) has issued a blank cheque to the complainant company (present applicant). It is the case of the complainant that as per the practice, the advance was paid to the respondent for getting sugarcane labourers. The respondent did not supply labourers as agreed. The total amount of advance due against respondent – accused was Rs. 3,26,123/-. Accordingly, the amount was filled in the blank cheque and the cheque was deposited in the bank, but the said cheque was dishonoured for the reason ‘insufficient funds’.

4. The learned Magistrate has held that the complainant failed to prove the legal liability against the respondent. He has referred to the letter dated 12.08.2002 issued by the respondent to the applicant/company wherein it has been mentioned that the previous due was Rs. 1,46,123/-, in addition, the company has issued a cheque for Rs. 1,80,000/- in favour of the respondent. Thus, the previous due clubbed with additional advance would become Rs. 3,26,123/-, as advance. The learned Magistrate has found that the documents placed on record coupled with the evidence laid does not prove the legal liability.

5. The learned advocate for the applicant has argued that upon own admission of the respondent through the letter dated 12.08.2002 (Exhibit- 85), if the previous amount due is clubbed with the additional advance paid to the respondent, the total amount of advance would be Rs. 3,26,123/-. The said fact having been admitted by the respondent, there was no reason for the learned Magistrate to hold that the applicant/company failed to prove the liability of the accused.

6. The aforesaid submissions have been rightly countered by the learned advocate for the respondent. The record that was placed by the complainant before the Trial Court which includes accounts extract (Exhibit – 105) would show that the amount of Rs. 1,46,123/- is not shown as due prior to 12.08.2002. The entries on receipt side of the accounts of the applicant/company would indicate that for the period from 23.09.2002 to 31.03.2003, the respondent has supplied labourers and has done work for more than Rs. 12,929/-. Besides above, the entry dated 01.04.2003 would show that a balance forwarded in the account of accused was Rs. 1,46,123/-. In other words, the record submitted by company itself would indicate that on 01.04.2003, the outstanding balance against the respondent was Rs. 1,46,123/-. The record would also show that during the period from 23.09.2002 to 31.03.2003, the respondent has supplied labourers and has done work

for more than Rs. 12,929/-. In that sense, the position as has been spelt out vide letter dated 12.08.2002 by the respondent has been changed. The evidence would at least show that after 12.08.2002, the respondent has supplied labourers to the applicant/company and therefore, the outstanding amount against respondent after 12.08.2002 cannot remain same as was existing on 12.08.2002.

7. On the basis of aforesaid evidence, the Trial Court, considering all relevant factors came to the conclusion that case put forth by the applicant/company was not believable. He has given additional grounds for acquitting the respondent.

8. In the circumstance, the plea put forth by the applicant that the respondent has not examined himself in defence is irrelevant as the presumption under Section 139 of the Act would be available only after initial burden to prove legal liability of the respondent has been discharged by the applicant-complainant. The finding of acquittal as rendered by the learned Trial Court on the face of record appears to be in accordance with law. The applicant, therefore, failed to make out a case. Accordingly, leave to file appeal is rejected. The application stands disposed of accordingly.

(ANIL L. PANSARE)
JUDGE

PS.B.