IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 764 OF 2018

Shishir Mohan Deshpande … Applicant

Versus

Aappaso Tatoba Jadhav and others … Respondents

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Mr. Kapil Shetye for the Applicant.
Ms. N.P. Boraste instructed by Mr. Girish Agrawal for Respondent No.2.
Mrs. M.R. Tidke, APP for the State.

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CORAM : N.R. BORKAR, J.

DATED : 21 JULY 2022

P.C. :-

. This Application takes an exception to the order dated 8 June 2017 passed by the learned Judicial Magistrate First Class, Karad in Summary Criminal Case No. 660 of 2017. By the impugned order, the learned Magistrate issued process against the present Applicant and three others for the offence punishable under Section 138 of the Negotiable Instruments Act (for short "N.I. Act").

2. The Respondent No.1 herein has filed the complaint against the present Applicant and three others for the offence punishable under Section 138 of the N.I. Act. The Respondent No.1 has alleged that the present Applicant and other co-accused induced him to invest money in their firm viz., Reliable Trading Company (accused No.1) and promised that they would pay double the amount within three years. According to Respondent No.1, on 17 December 2013, he invested Rs.1,00,000/-. It is

alleged that after accepting the said amount, the accused issued him cheque in question for an amount of Rs.2,00,000/-. Respondent No.1 has stated that he deposited the cheque for encashment with his banker, however, the same was returned with the remark "*Funds Insufficient*".

3. The learned Counsel for the Applicant submits that the alleged cheque is not a cheque as defined under Section 6 of the N.I. Act, but it is merely withdrawal slip of Jankalyan Nagari Sahakari Patsanstha. It is further submitted that Patsanstha is not banker within the meaning of Section 3 of the N.I. Act. In support of his submission, the learned Counsel for the Applicant has relied upon the decision of this court in *Kiskinda Bapu Kale vs. Sushilabai w/o Navnath Sawant*[1].

4. I have perused the alleged instrument which according to the Respondent No.1 is a cheque and according to the Applicant is a withdrawal slip. Perusal of it, shows that it is signed by the original accused No.1 asking Jankalyan Nagari Sahakari Patsanstha to pay sum of Rs.2,00,000/- to Respondent No.1. According to Section 6 of the N.I. Act, a cheque is a bill of exchange. Section 5 of the N.I. Act defines bill of exchange as an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument. In my view, the instrument in question fulfills all the ingredients of bill of exchange as defined in Section 5 of the N.I. Act. As regards the contention that Patsanstha is not a banker, no material is placed on record to that effect.

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1 Order dtd. 26 April 2016 in Criminal Application No.2160 of 2014

5. As regards the decision in *Kiskinda Kale (supra),* the contents of instrument were altogether different. Similarly, there is no finding that Patsanstha is not a bank. Considering the overall facts and circumstances, no interference is called for in the impugned order.

6. The Application is dismissed.

(N.R. BORKAR, J.)

KANCHAN PRASHANT DHURI Digitally signed by KANCHAN PRASHANT DHURI Date: 2022.07.26 16:52:12 +0530