

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 765 OF 2018

Shishir Mohan Deshpande ... Applicant

Versus

Yedurao Shivaram More and others ... Respondents

.....

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.

.....

CORAM : N.R. BORKAR, J.

DATED : 21 JULY 2022

P.C. :-

. This Application takes an exception to the order dated 19 April 2017 passed by the learned Judicial Magistrate First Class, Karad in Summary Criminal Case No. 636 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 22 November 2013 he invested amount of

Rs.3,00,000/- and again on 17 December 2013, he invested amount of Rs.2,00,000/-. It is alleged that after accepting the said amounts, the accused issued him two cheques in question for amount of Rs.6,00,000/- and Rs.4,00,000/-. Respondent No.1 has stated that he deposited the said cheques for encashment with his banker, however, the same were returned with the remark “*Funds Insufficient*”.

3. The learned Counsel for the Applicant submits that the alleged cheques are not cheques as defined under Section 6 of the N.I. Act, but they are merely withdrawal slips 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 are cheques and according to the Applicant are withdrawal slips. Perusal of it, show that they are signed by the original accused No.1 asking Jankalyan Nagari Sahakari Patsanstha to pay sum of Rs.6,00,000/- and Rs.4,00,000/- 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

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

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.

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
16:52:22 +0530