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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO. 442 OF 2018**

Abhijit Balwantrao Chavan ... Applicant  
Vs  
Pradip Tukaram Kadam & Anr. ... Respondents

Mr. Kuldeep Nikam Advocate for the Applicant  
Mr. R.M.Pethe, APP for the Respondent.  
Mr. Bhooshan Mandlik i/b Mr. S.S.Patwardhan for Respondent  
No.1.

**CORAM : C.V.BHADANG, J.**

**DATE : 3<sup>rd</sup> JANUARY, 2022**

**P.C. :**

This is an application for Leave to Appeal against acquittal.

2. The Applicant/Complainant had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short "Said Act") against the Respondent/Accused for dishonour of a cheque for Rs.7 Lacs. The case made out by the Complainant is that the Respondent who was a driver by profession, was desirous of obtaining a tender for sand for which

the Respondent was in need of Rs.7 Lacs. Further case is made out that the Complainant collected the said amount from his friend and paid the amount in cash to the Respondent, for which the Respondent passed the subject cheque which was dishonoured.

3. At the trial, the Complainant examined himself (CW-1) and one more witness Sangram Shivaji Mane (CW-2). The Respondent did not lead any evidence. The learned Magistrate in his Judgment dated 1<sup>st</sup> August, 2017 found that as the signature on the cheque is admitted, presumption under Section 139 of the Said Act is available in favour of the Complainant. The learned Magistrate further went on appreciating the oral evidence of the Complainant and C.W.2 in order to find that the Respondent has rebutted the presumption. It is in that view of the matter that, the Respondent has been acquitted.

4. I have heard the learned Advocate for the Applicant and the learned Advocate for the Respondent. Perused record.

5. Learned Advocate for the applicant has submitted that the reasoning given by the learned Magistrate in holding that the presumption stands rebutted is not acceptable and it is perverse. It is submitted by the learned Advocate for the applicant that the amount is paid by Respondent to the Petitioner, and the signature on the cheque being admitted, the statutory presumption is raised which cannot be held to have been rebutted. Learned Advocate for the Applicant also placed reliance on the decision of this Court in the case of **Kashinath Balu Gaonkar Vs. Smt. Sunita Krishnajirao, (2015 (2) DCR 142)** in order to submit that the payment of amount in cash cannot come in the way of the complainant.

6. Learned Advocate for the Respondent has taken me through the evidence of the complainant in which he has admitted that it was the complainant who was desirous to fill the tender. However, on account of some formalities and requirements, it was not possible for the complainant to do so, and therefore, the tender was filled in the name of the respondent. He also pointed out that the complainant has

admitted that the respondent was helping him (the complainant) in the matter of filling of the tender. It is submitted that there is no acceptable evidence to show that the complainant had collected the amount of Rs.7 Lacs and the same was paid in cash to the respondent. He pointed out that the respondent was not in the business of trading of sand as he is driver by profession and it is unacceptable that the respondent would be desirous of filling the tender.

7. I have considered the submissions made by the learned advocates for both sides. It is true that the respondent had admitted signature on the subject cheque, and therefore, learned Magistrate was right in holding that the presumption under Section 139 of the Said Act is available in favour of the applicant/ complainant. However, on subsequent analysis of evidence, learned Magistrate has rightly come to the conclusion that the presumption stands rebutted. It is now well settled that the accused can rebut such presumption on the basis of preponderance of probability. The applicant claims that the amount of Rs.7 Lacs was collected from his friends and paid in

cash to the respondent. The complainant has also admitted that the tender was filled in the name of the respondent and it was the respondent who was helping the complainant in the said matter. If this is so, surely the respondent has successfully rebutted the presumption.

8           It is well settled that in an appeal of the present nature, unless and until, the findings recorded by the learned Magistrate are found to be perverse, no interference is called for. ***Chandrappa & Ors. V/s. State of Karnataka<sup>1</sup>***. Applying the principles, no case for interference is made out. Application is accordingly dismissed.

**( C. V. BHADANG, J. )**

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1 (2007) 4 SCC 415