

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

CRIMINAL APPLICATION NO.469 OF 2018

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Gangoli Ramesh Shenoy

..Applicant

Versus

M/s. Globe Accessories Pvt. Ltd. & Ors.

..Respondents

Mr. Murtuza i/by G. T. Mestha, for the Applicant.

Mr. Prashant Prabhu i/by D. V. Pawar, for the Respondent Nos.1 to 3.

Mr. A. A. Palkar, APP for the Respondent/State.

CORAM : NITIN W. SAMBRE, J.

DATE : 26th SEPTEMBER, 2022

PC.

1. The complainant has initiated complaint Case No.682/SS/2016 based on the dishonour of cheques, the notices issued to the non-applicant/accused and Exh.42, an agreement dated 13th February, 2011. The Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai vide judgment and order dated 5th September, 2018 directed acquittal of the accused.

2. The submissions while questioning the aforesaid judgment are, the Court of Magistrate has committed an error of law and failed to appreciate the evidence on record. Counsel for the applicant/complainant would urge that the statutory notices issued under Section 138 of Negotiable Instruments Act were not replied by the non-applicant. According to him, Exh.42, an agreement dated 13th February, 2011 even if is on stamp paper which is purchased on 15th February, 2011 that by itself will not hamper the prosecution, as there is presumption in

favour of the applicant of drawing cheques for admitted debt. He would further claim that even the agreement has to be on the stamp paper is not a statutory requirement.

3. He would invite attention of this Court to the evidence of the applicant so as to justify the aforesaid stand, as according to him, the said factual matrix has been duly explained by the applicant. The further contentions of counsel for the applicant are, in defence under Section 313 CrPC, statement of the accused was recorded which speaks of blank cheques were issued during business transaction which will misuse. As such, according to counsel for the applicant even if the agreement Exh.42 is on stamp paper of subsequent date of its execution, same will not legalize the transaction. As such, he would urge that the leave be granted.

4. Counsel for the non-applicant would support the order of acquittal. According to him, already civil suits are pending between the parties for recovery of the amount.

5. I have appreciated the said submissions.

6. The foundation of the complaint is admittedly based on the transaction as reflected in the agreement Exh.42 which is shown to have been executed on 13th February, 2011. The said agreement is drawn on a stamp paper which was purchased on 15th February, 2011 i.e. two days subsequent to the date of execution of agreement. As such, *prima-facie* it can be inferred that the agreement was executed two days prior to the date of purchase the stamp paper. Said piece of evidence if appreciated

in the above background, said document rightly so claimed by non-applicant a suspicious document.

7. While considering the prosecution under Section 138 of NI Act, rightly so claimed by the counsel for the applicant that there is statutory presumption in favour of the applicant that cheques are issued towards admitted liability. However, this Court is required to be sensitive to the principle of law that it is for the complainant to discharge his initial burden by demonstrating issuance of cheques for lawful debt.

8. The fact that the agreement was executed prior in point of time on a stamp paper which was subsequently purchased for the first time is sought to be explained through an affidavit in the evidence. Said was never a case of the applicant neither in the complaint nor statutory notices issued under the NI Act.

9. As such, very foundation which is laid down by the applicant/complainant for initiating prosecution is misplaced. That being so, Magistrate was justified for directing acquittal of respondent/accused. No error of jurisdiction or law could be noticed. The application as such lacks merits.

11. As such the application for leave to appeal stands rejected.

[NITIN W. SAMBRE, J.]