

THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL REVISION APPLICATION NO. 54/2022
Pavan Raju Sachadev ..Versus...Sau. Kajal Sunil Kochar

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr. Pranit Vairagade, Advocate for the applicant
Mr. J.R.Kidilay, Advocate for respondent.

CORAM : AVINASH G. GHAROTE, J.

DATE : 22/06/2022

1] Heard Mr. Pranit Vairagade, learned counsel for the applicant and Mr. J.R.Kidiley, learned counsel for the respondent.

2] The present revision challenges the judgment dated 22.10.2020 passed by the learned JMFC, Court No. 5 Wardha, whereby the accused/revision applicant has been convicted for the offence under Section 138 of the Negotiable Instruments Act and sentenced to pay fine of Rs. 1,53,000/-, i/d S.I of two months and a compensation of Rs. 1,60,000/- payable to the complainant within one month and the judgment in appeal by the learned Sessions Court, dated 9.12.2021, whereby the appeal has been dismissed, confirming the judgment of the learned Magistrate dated 22.10.2020.

3] Mr. Vairagade, learned counsel for the applicant submits that the impugned judgments do not take into consideration the plea put forth by the accused that the stamp paper upon which the loan agreement (Usanwar Pavati) dated 3.3.2018 was written, acknowledging the liability of the accused to pay the cheque amount, was not duly proved as per law, on the ground that the witness to the same was the husband of the complainant, who was also the power of attorney holder for the complaint in the matter of filing and prosecuting the complaint. He further submits that the impugned judgments ignores the evidence of DW-2 Ravi Gilani, who averred that blank stamp papers were handed over to the husband of the complainant for the purpose of executing an agreement of lease, in respect of a shop and had been misused by the complainant to create the loan agreement (Usanwar Pavati, Exh.29). He therefore submits that on these two grounds, the impugned judgments are required to be quashed and set aside.

4] Mr. Kidiley, learned counsel for respondent/ original complainant opposes the application and supports the impugned judgments contending that the Usanwar Pavati Exh. 29 was proved as per law and the evidence of DW-2 was unreliable.

5] It is not in dispute that the cheque No. 444874,

dated 24.3.2018 for the sum of Rs. 1,50,000/- drawn on Canara Bank, Wardha Branch, on the account of the accused, was with the complainant which when presented by the complainant for encashment through her bank Omprakash Devara Peoples Co.Op.Ltd. Hingoli, Branch at Wardha, on 24.8.2018, was returned back under the cheque return memo dated 27.8.2018 on account of “insufficient funds” in the account of the accused. A legal demand notice was thereafter issued on 5.9.2018, which was returned back unclaimed, as a result of which the complaint was filed on 26.10.2018. The signature of the accused on the cheque dated 24.8.2018 (Exh.23) is admitted. So also the signature of the accused on the Usanwar Pavati (loan agreement) dated 3.3.2018 Exh.29 is also admitted. It is also material to note that there is no reply to the legal notice and therefore absence of any defence at that point of time. For the first time in the cross examination of the complainant, a defence is sought to be raised that two blank signed stamp papers and blank cheque were given to the complainant for execution of an agreement of rent in respect of shop and towards security which have been misused by her by creating the Usanwar Pavati. In this context, in the evidence of DW-1 (accused) though it is stated that he had given two stamps papers in his own name, two stamp papers in the name of his brother, one stamp paper in the name of his brother and cheque to the husband of the complainant for the purpose of taking on rent a shop on Sai

Mandir Road, the story clearly appears to be improbable for the reason that in case a shop was to be taken on rent, what would have been required, was a single stamp paper in the name of an individual person and not multiple stamp papers in the name of three different persons. That apart, DW-1/accused does not say in his evidence that the stamp papers and cheque were signed by the respective persons in whose names they stood, whereas in the cross examination, he admits that the stamp paper dated 3.3.2018 was purchased by him and it bears his signature. He also admits that the story that the stamp paper was purchased for the purpose of executing the agreement of rent was raised by him for the first time in his evidence. Nothing has been brought on record as to whether the shop in question was belonging to the complainant or her husband, in order to lend credibility to the plea. He further admits that the cheque was also given to the complainant. That being the position, once the issuance of the cheque and the signature on the agreement Exh.29 stood admitted, the burden shifted upon the accused. However a perusal of his evidence would demonstrate that no substantial material has been brought on record to discharge the same. A perusal of the evidence of DW-2 would indicate that he admits that before him there were no talks between the husband of the complainant and the accused regarding taking of any premises on rent, still he goes on to say that the stamp paper was given for the purpose of taking the shop on rent. The

evidence further indicates the close relations which DW-2 has with the accused, considering which the Courts below have rightly disbelieved his evidence.

6] In so far as the plea that the Usanwar Pavati (loan agreement) was not proved, it is material to note that PW-1 is the witness to the same and has proved the same in his evidence. Merely because PW-1 happens to be the husband of the complainant and so also her power of attorney, that by itself cannot be a ground to hold that he was incapable of proving the Usanwar Pavati (Exh.29). On the contrary, it was open for the accused to have examined the other witness to the Usanwar Pavati (Exh.29) to disprove it, which, however, has not been done.

7] It is thus apparent that though a specific defence was raised for issuance of the cheque and the Usanwar Pavati, the same has not been proved, in view of which I do not see any reason to interfere with the concurrent findings rendered by the Courts below. The revision is therefore without any merits and is accordingly dismissed. No costs.

Rvjalit

JUDGE

Digitally sign byRAJESH
VASANTRAO JALIT
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