IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Criminal Application (APPA) No. 421 of 2021

Hemant S/o Vijayrao Khobragade
Versus
Abdul Latif Gafar Sheikh

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's order	Court's or Judge's Order

Shri R.R.Vyas, Advocate for the applicant.
Shri Nitin R. Bhishikar, Advocate for the respondent.

CORAM : ANIL S. KILOR, J.
DATED : 6th DECEMBER, 2022.

This criminal appeal takes exception to the judgment and order dated 27th May, 2021 passed by the Judicial Magistrate First Class, Gadchiroli in Summary Criminal Case No. 670 of 2018 acquitting the respondent for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

2. The brief facts of the complainant is as under:-

The complainant is proprietor of Om Traders and used to sell cement, iron, bricks and stones and other articles. The accused on 15.08.2015 had purchased article worth of Rs.2,44,500/- from the complainant on credit. At that time the accused had promised that he would repay the said amount after selling his shop. Thereafter, the accused sold his shop but did not pay the amount to the complainant. Hence, the complainant demanded his amount but the accused told that he did not receive amount. Hence, the informant waited for some time. Thereafter, the complainant again demanded the amount to the accused. But accused tried to avoid the complainant. Lastly, on the request of complainant the accused issued cheque on 28.8.2018, bearing No.820229, drawn on SBI, Gadchiroli of Rs.2,44,500/-. Thereafter, the complainant deposited the said cheque to his account on 3.9.2018 but it came to be dishonoured due to insufficient fund. Thereafter, the complainant again contacted the accused and told the said fact. At that time the accused told to the complainant to again deposit said cheque after some time. Hence, on 17.9.2018 the complainant again deposited said cheque to his bank. Again on 25.9.2018 the said cheque dishonored due to remark of insufficient fund. Hence, the complainant contacted to the accused. At that time the accused told to the complainant that he has not sanctioned bank loan and therefore, amount is not available to his account. The accused also told to the complainant to deposit said cheque after some time. Hence, on 25.10.2018 the complainant deposited said cheque to his bank account. Again on 30.10.2018 said cheque came to be dishonored with the remark of insufficient fund. Hence, the complainant got to know that the accused is cheating him. Hence, the complainant issued notice on 26.11.2018 through his advocate to accused. The accused failed to pay the said amount within 15 days of receipt of notice. Hence, the complainant filed present complaint.

3. I have heard learned counsel for the respective parties.

4. Learned trial court while acquitting the respondent has observed thus:

> 10. The complainant in his cross-examination admitted that bills (Exh.26 and 27) does not appear the signature of accused. Further, the complainant is admitted that he had not file income tax return on record. After perusal bills (Exh.26 and 27), it shows that there is no signature of accused as a receiver. Further, the complainant filed original bills on record. It is a general practice that whenever any seller after selling article used to issue original bill towards purchaser. In this case the complainant has not filed second copy or office copy of bill on the record. The complainant filed original bill on record without explaining how original bill is came in his custody. Therefore, misuse of bills can not be ruled out. Further, the complainant has not filed original tax invoice on record. Further, the complainant failed to

show that on the alleged day he has article in his possession to sell same to the accused.

5. Learned counsel for the appellant fails to point out any error committed by the learned trial Court while observing that the complainant failed to prove transaction between the complainant and the accused during the relevant period when the accused purchased cement by producing necessary document i.e. tax invoices and capacity of the complainant that on that day he was having sufficient articles to sell out.

6. Thus, as the complainant failed to prove legally enforceable debt accrued against the respondent and in discharge of liability the respondent issued subject cheque.

7. In the circumstances, learned trial Court has rightly acquitted the respondent for the offence punishable under Section 138 of Negotiable Instruments Act, 1881 and as no error has been committed by the learned trial Court in acquitting the respondent. Accordingly, I pass the following order.

i. Leave to appeal is refused.

[ANIL S. KILOR, J.]

SACHINDANAND K NAIR

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