

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

CRIMINAL APPLICATION (APPA) NO. 482 OF 2021

Tulshiram Giridharrao Potdukhe

Vs.

V. M. B. Homes Through Partners 1) Shri Chandrasen Gayaprasad Yadav and another

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

Court's or Judge's orders

Mr. D. R. Bhoyar, Advocate for applicant.

CORAM : AVINASH G. GHAROTE, J.

DATE : 22/06/2022

1. Heard Mr. Bhoyar, learned counsel for the applicant.

2. The application seeks grant of leave to appeal against the judgment dated 17.2.2021 passed by the learned Judicial Magistrate First Class, Court No.5, Wardha, whereby proceeding instituted by the applicant/complainant the same has been dismissed on the ground that the complainant had failed to prove a legally enforceable debt or liability.

3. Mr. Bhoyar, learned counsel for the applicant submits that the impugned judgment is infirm on the touchstone of the material available on record, and therefore, cannot be sustained. He submits that Rs.1,00,000/- was received by the complainant consequent to the transaction in question dated

30.12.2014, was not relatable to the said transaction but was relatable to some other transaction and therefore, it was not permissible for the learned trial Court to have relied upon it to hold that there was no legally enforceable debt or liability and therefore, leave ought to be granted.

4. Certain facts are not in dispute. On 30.12.2014 the complainant has lent an amount of Rs.5,98,000/- in cash to the accused which is a partnership firm through its partners, for the repayment of which, cheque No.000235 in the above sum drawn on HDFC Bank, Wardha was tendered to the complainant. The aforesaid cheque when presented for realization was returned back dishonoured for the reason 'funds insufficient' by a memo dated 4.7.2015 issued by the HDFC, the bankers of the accused, whereupon on 31.7.2015 a demand notice was sent which was received on 5.8.2015 but was not replied, resultant to which, a complaint came to be filed on 25.8.2015. The complainant examined himself and one Prakash Warghane as PW 2 who deposed that the amount of Rs.5,98,000/- was paid in cash by the complainant to the accused in his presence. The cheque was proved as Exh.49. The cheque return memo as Exh.50. The notice at Exh.51. No defence witnesses were examined. The learned Magistrate by the impugned judgment dated 17.2.2021 has held that the complainant has failed to prove that the cheque was

issued for legal debt and liability.

5. It is material to note, that a defence was raised by the accused that on several dates the accused had repaid the entire amount to the complainant, as detailed in para 20 of the judgment. It is also contended that under various declarations of the dates as mentioned in para 23 of the judgment issued by the complainant, he has admitted the receipt of the entire amount to the complainant. The complainant had denied the signature on the declarations as a result, on the request of the accused the declarations were sent to the handwriting expert for his opinion. The opinion was placed on record, however, the handwriting expert who had rendered the opinion never entered the witness box as a result of which, the reports were not proved and thus rightly not relied upon by the learned trial Court. Since the signature on the cheque was admitted by the accused no.1, the burden to rebut the presumption under Section 139 of the Negotiable Instruments Act squarely stood upon the accused to discharge which the accused has relied upon the cross-examination of the complainant. The cross-examination of the complainant indicates the admission of receiving of sum of Rs.1,00,000/- on 19.1.2015 by NEFT. Though, he has denied that the said amount was received under the aforesaid transaction but claimed that the same was received under some other transaction, there is absolutely no evidence in this

regard. Once the complainant admits receipt of part of the cheque amount consequent to the transaction in question the logical corollary would be that the receipt was in respect of the transaction in question, unless material was brought on record by the complainant to indicate otherwise. In the instance case, admittedly there is no material from the side of the complainant to indicate that the receipt of Rs.1,00,000/- by NEFT on 19.1.2015, was not in relation to the transaction in question but in relation to some other transaction. Admittedly, the receipt of Rs.1,00,000/- is prior in point of time to the presentation of the cheque, considering which, the cheque amount clearly was not due and payable. It was permissible for the complainant to have come out with a case in the notice itself as well as in the complaint that receipt of the aforesaid amount on 19.1.2015 was in respect some other transaction which could have been pleaded and demonstrated, however, that is not the case, Considering which, I do not see any infirmity with the findings rendered by the learned Magistrate and no case for grant of leave is made out. The request for leave is accordingly declined.

The application is dismissed.

JUDGE

Sarkate