IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.355 OF 2023

Bipin Kumary Ray alias Roy ...Applicant

Versus

Narayan Genu Gonate ...Respondent

Ms. Namrata S. Bobade, i/b Somnath Nagarkar, Advocate for Applicant.

Mr. A.R. Patil, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 15th SEPTEMBER 2023

PC :

1. The Applicant has challenged the order dated 15th February 2022 passed by the Judicial Magistrate First Class, Wadgaon Maval, Pune in S.C.C. No.221/2022 issuing process against the Applicant under Section 138 of Negotiable Instruments Act, 1881.

2. Heard Ms. Namrata S. Bobade learned Counsel for the Applicant and Mr. A.R. Patil, APP for the State.

3. The complaint was filed by the Respondent No.1 herein. He has stated in his complaint that the Applicant and the

Complainant got acquainted in connection with the transaction of sale of land at Gat No.106, village Nanoli, taluka Maval, district Pune. The Applicant agreed to pay Rs.63 lakhs to the Complainant and his co-owner. Accordingly, sale deed was executed and registered on 7th July 2021. It was agreed between the parties that the additional amount of Rs.5,50,000/- was to be paid by the Applicant to the Complainant on the date of the sale deed. On that date, i.e., on 7th July 2021, the Applicant gave a cheque dated 7th August 2021 for Rs.5,50,000/- issued on Punjab National Bank, Gaikwad Heights, Aundh Pune. When the Complainant deposited that cheque with the bank i.e., Punjab National Bank, he was not informed that the account of the Applicant was closed. The Complainant then met the Applicant in his office at Baner and returned that cheque. The Applicant gave Rs.1 lakh in cash and gave another cheque for the balance amount of Rs.4,50,000/-. Subsequently, the Applicant requested the Complainant to return even that cheque and requested further to accept another cheque dated 18th October 2021 for Rs.4 lakhs. The Complainant accepted that cheque. Even that cheque was dishonoured. The

Applicant told the Complainant that the account was temporarily closed but it was functional again and, therefore, the Complainant should deposit that cheque with the bank. Therefore, the Applicant again deposited the cheque on 15th December 2021 but again it was dishonoured for insufficiency of fund. Thereafter, the Complainant sent statutory notice demanding the amount of Rs.4 lakhs but amount was not paid and, therefore, the complaint was filed.

4. Learned Counsel for the Applicant submitted that the cheque in question issued on Punjab National Bank Gaikwad Heights, Aundh Pune bearing No.755869 was not issued by the Applicant. She invited my attention to the copy of the cheque wherein the drawer of the cheque was mentioned as Vaibhav Electrical. One signature is appearing on that cheque. She submitted that it is not the signature of the Applicant. Therefore, he is not the drawer and hence no offence under Section 138 of N.I. Act is made out.

5. I have considered these submissions. The Complainant

had believed the Applicant and had accepted the cheque as having been issued by the Applicant himself. The complaint makes an averment that the cheque was given by the Applicant himself and Complainant was repeatedly told that the cheque would be honoured. The Complainant was told that the Applicant's account was temporarily closed but it was functional and, therefore, the Complainant should deposit that cheque. All these averments are mentioned in the complaint. The Complainant had sent this statutory notice dated 27th December 2021 to the Applicant. It was not replied by the Applicant and, therefore, the Applicant had not informed the Complainant that the cheque was not issued by him. Thus, the averments in the complaint clearly make out a case not only under Section 138 of N.I. Act but the offence of cheating as well. Therefore, at this stage, it is not possible to quash the entire proceedings against the Applicant. The signature on the cheque and the account details are required to be established and considered during trial after evidence is led. The averment in the complaint at this stage sufficiently make out the offence against the present Applicant. The Complainant was made to believe that it was the cheque issued by the Applicant on the account maintained by him. Therefore, at this stage, the averments in the complaint are sufficient for issuance of process. All other disputed question of fact regarding the signature on the cheque and the account holder of the cheque as well as the consequence of false representation made by the Complainant to the Accused are matters of trial. The trial Court is empowered to take further action regarding other serious offence depending on the evidence led before him. Hence, in this view of the matter, the order of issuance of process passed against the Applicant cannot be interfered with.

6. Consequently, the Application is rejected.

(SARANG V. KOTWAL, J.)