

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

CRIMINAL REVISION APPLICATION NO. 287 OF 2022

Ishoo Narang

... Applicant

v/s.

Blue Water Ship Management Pvt. Ltd.

and anr.

.... Respondents

Mr. S.N. Raj i/b. Mr. Avinash Joshi and Ms. Janki Sampat
for the Applicant.

Mr. M.G. Patil, APP for the State.

Mr. Girish Kulkarni, Sr. counsel a/w. Ms. Mrunmai Kulkarni i/b.

M/s. Vibha Juris Consult Co. for Respondent No.2.

CORAM: R.G. AVACHAT, J.

DATED : 20th FEBRUARY, 2023.

ORAL JUDGMENT :-

. Rule. Rule returnable forthwith. With consent of the learned advocate for the respective parties, heard finally.

2. The challenge in this Revision Application is to the judgment and order dated 10/05/2022 passed by the Court of Additional Sessions Judge, Greater Mumbai in Criminal Appeal No.79 of 2018. It was an appeal from conviction. The trial court convicted the Applicant herein for the offence punishable under section 138 of the Negotiable Instruments Act and sentenced to suffer simple imprisonment for three

months with a direction to pay a sum of Rs.1,12,68,211/- with 9% p.a. interest thereon from the date of filing of the complaint till its realization, as a compensation.

3. The Appellate Court partly allowed the appeal remanding the matter back to the trial court with a direction to examine the Applicant/accused no.1 under section 313 of the Code of Criminal Procedure and then on hearing arguments of both the sides, decide the case afresh on its own merits.

4. The learned advocate for the Applicant submits that the appeal was argued on merits of the matter. Attention of this court is adverted to paragraph 6 of the judgment of the Appellate Court. According to the learned advocate for the Applicant, the cheque was not for legally enforceable date. The learned advocate for the Applicant relies on the judgment of the Apex Court in *Dashrathbhai Trikambhai Patel v/s. Hitesh Mahendrabhai Patel and anr. (2023) 1 SCC 578*. He therefore urge for acquittal of the Applicant herein.

5. The learned senior advocate appearing for the Respondent/complainant would on the other hand submit that the amount due from the Applicant/accused was in terms of value of a

dollar which was fluctuating. When the matter has been remanded back to the trial court, arguments in that regard would be made before the trial court. According to him, the order impugned herein is not liable to be set-aside.

6. Considered the submissions advanced. Perused the judgment of the Trial Court and that of the Appellate Court as well.

7. Attention of this Court was adverted to the vital admission given by the Complainant, Managing Director in his cross-examination. The said admission is reproduced hereinbelow in verbatim :-

“ It is true that on 16.07.2014, I received Rs.30,00,000/- from accused out of his liability incorporated in the cheque. It is true that after the receipt of above amount and the cheque amount of Rs.12,09,404/-, the liability of accused reduced to Rs.1,12,68,211/-. ”

8. The Apex Court in ***Dashrathbhai Trikambhai Patel*** (supra) has held thus :-

“when a part- payment of the debt is made after the cheque was drawn but before the cheque is encashed, such payment, held, must be endorsed on the cheque under Section 56 of the Act and the cheque cannot be presented for encashment without recording the part payment. Therefore, if the unendorsed cheque is dishonoured on presentation, the

offence under Section 138 would not be attracted since the cheque does not represent a legally enforceable debt at the time of encashment....”

9. In view of the dictum of the Apex Court in ***Dashrathbhai Trikambhai Patel*** (supra), the cheque in question did not represent legally enforceable date at the time of encashment. Section 138 of the Negotiable Instruments Act, therefore, did not get attracted. The Revision Application therefore deserves to be allowed and is accordingly allowed as under :-

(a) The order dated 10/05/2022 passed by the Court of Additional Sessions Judge, Greater Mumbai in Criminal Appeal No.79 of 2018 is hereby quashed and set-aside. The Applicant is acquitted of the offence punishable under section 138 of the Negotiable Instruments Act. His bail bonds, if any, stands cancelled.

10. Revision Application stands disposed of in above terms.

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JAYANI

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(R.G. AVACHAT, J.)