

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

CRIMINAL APPLICATION NO. 1098 OF 2023

Mohammed Faizen

..Applicant.

Versus

Kiran Dnyandev Hinkule & Anr.

..Respondents

Mr. Advait U. Shukla a/w. Kunal D. Ambulkar for Applicant.

Mr. A. R. Patil, APP for State/Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 11 SEPTEMBER 2023

PC :

1. The Applicant has challenged the order dated 05.07.2023 passed by the Judicial Magistrate, First Class, 6th Court, Belapur, Navi Mumbai, below Exhibit-40 in S.C.C.No.4394 of 2022 thereby directing the applicant to pay interim compensation of 10% of the cheque amount.

2. Heard Shri. Advait Shukla, learned counsel for the Applicant and Shri. A. R. Patil, learned APP for the State.

3. Learned counsel for the Applicant submitted that, there was no legally enforceable liability, as far as, the present applicant

is concerned. The averments in the complaint are not correct. The invoices annexed to the complaint do not tally to constitute amount of Rs.48,56,188/- which is the amount of the cheque. He submitted that, there is no acknowledgment issued by the applicant for having received any goods from the complainant i.e. the Respondent No.1 herein. Learned counsel relied on an agreement between the Applicant and one R.V. K. Traders through Vaibhav Thombre mentioning the same cheque in the agreement. This agreement shows that, there was a contract between the said R.V.K. Traders and the applicant. The Respondent No.2/complainant has signed as a witness on that agreement. Therefore, this agreement shows that the averments in the complaint are not correct.

4. Learned counsel for the applicant relied on the Judgment of a Single Judge Bench of this Court in the case of *Ashwin Ashokrao Karokar Versus Laxmikant Govind Joshi*¹. He relied on paragraph-41 of the said Judgment. In that case, there were observations that, if the cheque is not presented during the

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period of its validity; the notice not having been issued in the stipulated time and the memo of dishonour of was not placed on record, then in such case, as an illustration, the complaint may not be maintainable and in such case the interim compensation may not be awarded.

5. Learned counsel for the applicant also relied on the order of the Hon'ble Supreme Court in the case of *Nitya Dharmananda @ K. Lenin & Anr. Versus Sri Gopal Sheelum Reddy also known as Nithya Bhaktananda and Anr. in Criminal Appeal No.2114 of 2017 with Criminal Appeal No.2115 of 2017 -State of Karnataka Versus Gopal Sheelum Reddy also known as Nithya Bhaktananda* wherein it was held that, if the Court is satisfied that, there is material of sterling quality which has been withheld by the investigator, the Court is not debarred from summoning or relying upon the same even if such document is not a part of the charge-sheet.

6. I have considered these submissions. I have perused the complaint and I have perused the impugned order. The complaint

mentions that the complainant was running a business of supplying onions and potatoes in wholesale rate to the customers. The applicant used to purchase onions and potatoes for his business. Initially, the transactions between them were smooth. In February 2022 i.e. between 17.02.2022 to 26.02.2022 the applicant ordered onions worth Rs.48,56,188/- and assured the complainant that he would pay the bill amount within a few days. The amount was not paid. The complainant had delivered the onions on credit. The complainant continuously followed up with the applicant/accused for the due amount. The applicant issued the cheque bearing No.629414 dated 20.04.2022 for an amount of Rs.48,56,188/- issued on the Central Bank of India, Mumbai. The cheque was dishonoured and after following due procedure the complaint was lodged.

7. During trial, the Applicant's plea was recorded. He pleaded not guilty. Thereafter the learned trial Judge after hearing both the sides passed an order U/s.143-A of the Negotiable Instruments Act (hereinafter referred to as 'N.I.Act') and directed the applicant to pay 10% of the total cheque amount within 60

days from the date of order i.e. 05.07.2023. The learned Judge recorded the submissions of both the sides. After considering the submissions, using his discretion, the learned trial Judge passed the impugned order directing payment of 10% of the cheque amount.

8. A copy of the cheque is annexed at Page No.89 of this application memo. The payee mentioned in the said cheque is Star Logistics i.e. the complainant's firm. Thus, there is a prima facie case in favour of the complainant. The same cheque was dishonoured and, therefore, there is a presumption U/s.139 of the N.I.Act which the applicant/accused will have to rebut during trial; which reads thus:--

“139. Presumption in favour of holder – It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque, of the nature referred to in section 138, for the discharge, in whole or in part, of any debt or other liability.”

9. Apart from that, there is another presumption U/s.118 of the N.I. Act. Thus, both these presumptions, at this stage, act in favour of the complainant which the applicant/accused will have

to rebut during trial. Ratio of *Ashwin Ashokrao Karokar's* judgment (supra) is not applicable to the present case. The difference between defence of the applicant and the averments in the complaint can only be decided during trial after the evidence is led. At this stage, it can't be held that the complaint is false and hence not maintainable. Therefore, reliance on this Judgment is misplaced. In the context of the ratio of *Nitya Dharmananda @ K. Lenin's* case (supra), it is not possible to record at this stage that the copy of the agreement between the applicant and R.V. K. Traders is of such sterling quality that it has to be accepted at this stage.

10. As far as, reliance on the agreement referred to herein above is concerned, it is a matter of defence of the accused and a copy of the said agreement cannot be said to be a document of such sterling quality which this Court can rely on to record the finding about its genuineness and about actual transaction between the parties. This can be decided at the trial after evidence is led by both the sides. Therefore, at this stage, no reliance can be placed on this document to hold that the complainant's case is

prima facie not true. The same reasoning applies to the invoices annexed to the complaint. The learned trial Judge has exercised his discretion through a well reasoned order. I do not see any reason to interfere with the impugned order and with the statutory requirement of Section 143-A of the N.I. Act.

11. The Application is rejected.

(SARANG V. KOTWAL, J.)