



Shakuntala

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO.19 OF 2024

PRAKASH DEIKAR

... APPLICANT

Versus

PUSHPENDRA KARAPURKAR

AND ANR.

... RESPONDENTS

Mr. Athnain Naik with Gaurang Kerkar, Advocate for the Applicant.

Mr. Gaurish Gaonkar, Advocates for Respondent No. 1.

Mr. Pravin Faldessai, Additional Public Prosecutor for Respondent No.2.

CORAM:- BHARAT P. DESHPANDE, J.

DATED :- 30th September, 2024

P.C.

1. Heard Mr. Naik learned counsel for the Applicant and Mr. Gaonkar learned counsel for Respondent No. 1.
2. This is a revision filed challenging concurrent findings of the Courts below holding the Applicant guilty of offence punishable under Section 138 of the Negotiable Instruments Act, 1881.
3. Mr. Naik learned counsel appearing for the Applicant would submit that both the Courts below failed to consider the defences raised by the Applicant and therefore, the impugned orders are

perverse and illegal. He would then submit that the evidence of Respondent is not sufficient enough to record the findings of conviction and that the material created sufficient doubt to the case of the Complainant.

4. Per contra, Mr. Gaonkar learned counsel for the Respondent No. 1 would submit that there are concurrent findings of facts and this Court, while considering revisional jurisdiction, is not required to re-appreciate the evidence.

5. Even otherwise, the signature on the cheque is not disputed and therefore, the Courts below has rightly applied the presumption under Section 139 of the Negotiable Instruments Act, 1881. Since there is no material produced for the Applicant/Accused to rebut such presumption, the Courts below has rightly observed that the ingredients of Section 138 stands proved.

6. On perusal of the Judgment passed by the Courts below, one thing is clear that complaint was filed for the offences punishable under Section 138 of the Negotiable Instruments Act, 1881, after complying with the requisites of the said offences.

7. The contention of the Complainant is that the Accused issued the cheque towards discharge of liability, which were presented for

encashment but returned unpaid. A legal notice was issued to the Accused which though received, was not complied with.

8. The material placed before the learned Magistrate would clearly go to show that relevant documents were placed on record which included a cheque, a memo of return from the Bank, a notice calling upon the Accused to repay the amount, etc. All these documents clearly goes to show that the signature on the cheque is not disputed. Accordingly, the learned Magistrate had rightly drawn the presumption under Section 139 of the Negotiable Instruments Act, 1881. It was further for the Accused/Applicant to rebut such presumption.

9. Learned Magistrate observed that there is no material produced on record to rebut such presumption and cross examination as well as the defences raised, while answering questions put to him under Section 313 of the Criminal Procedure Code are only of simple denial.

10. The First Appellate Court in an appeal filed by the Applicant, observed that Applicant failed to rebut the presumption under Section 139 of the Negotiable Instruments Act, 1881 and accordingly, confirmed the sentence as well as compensation

awarded by the Magistrate.

11. Since, the grounds in the present revision are devoid of merits as all these grounds are already covered and considered by the learned Magistrate as well as the First Appellate Court on appreciating evidence produced before it, this Court while considering its revisional jurisdiction, cannot re-appreciate such evidence. The grounds raised in the present revision are nothing but a repetition of the defence which has been raised before the learned Magistrate as well as before the First Appellate Authority.

12. The impugned orders are found to be based on settled principles of Law governing the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. Such observations of the Courts below cannot be termed as perverse or illegal.

13. Accordingly, there is no substance in the present revision and thus, stands dismissed.

BHARAT P. DESHPANDE, J.