

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

APPLICATION FOR LEAVE TO APPEAL NO. 67 OF 2024

Jayashri Ramachandra Sawant

...Applicant

Versus

Raghukul Education Society & Anr.

...Respondents

- Mr. Alankar Kirpekar a/w Mr. Sagar Kasar, Mr. Rishab Tiwari, Mr. Ayush Tiwari, Mr. Amol Wagh and Ms. Chaitali Bhogle i/b Mr. Sagar Kasar, for Applicant.
- Mr. Niranjan Mundargi a/w Mr. Vikrrant Shinde, for Respondent No.1.
- Ms. Rutuja A. Ambekar, APP for Respondent No.2 – State.

CORAM : MANISH PITALE, J.

DATE : 26th August, 2024.

P. C. :

1. Heard, Mr. Kirpekar, learned counsel for the applicant and Mr. Mundargi, learned counsel appearing for the contesting respondent in the present application.

2. The applicant is seeking leave to appeal against judgment and order dated 06.05.2023 passed by the Court of Judicial Magistrate First Class at Satara (hereinafter referred to as the “Magistrate”), whereby the contesting respondent was acquitted of offence under Section 138 of the Negotiable Instruments Act, 1881. The Magistrate found that the applicant as the complainant failed to demonstrate that the cheque in question was issued towards discharge of legally enforceable debt and also that the notice of

dishonour of cheque was not served in terms of the requirements of Section 138 of the aforesaid Act.

3. The learned counsel for the applicant submitted that in the present case the Magistrate was confused as there were two transactions. In one transaction the husband of the applicant had advanced amount of ₹ 50 Lakhs to the accused and in the second transaction an amount of ₹ 50 Lakhs was advanced by the applicant from her bank account to the accused.

4. The material on record, according to the learned counsel for the applicant, shows that two cheques, one of ₹ 19 Lakhs and other of ₹ 25 Lakhs issued by the accused in the name of the applicant, were dishonoured and that the complaint was filed in respect of such dishonour of cheques. The Magistrate appears to have been confused with certain amounts said to have been returned by the accused to the husband of the applicant. In fact, the Magistrate in paragraph No.15 of the impugned judgment and order committed a factual error by giving a finding that cheque No.10 issued in the account of the complainant by the accused was honoured. The said cheque, as per the deposition of the concerned Bank Manager, was issued in the name of the husband of the complainant and therefore, the said cheque of ₹ 50 Lakhs being honoured could not be treated as return of the amount advanced by the complainant from her bank account. There was nothing on record to show

that the applicant as the complainant had consented to the said amount of ₹50 Lakhs being paid into the account of her husband, as return of amount that she had advanced. The fact that amount of ₹ 50 Lakhs advanced by the husband was returned by the accused is not disputed, but the payment of further amount of ₹ 50 Lakhs into the account of the husband of the complainant was not to be confused with the return of the amount advanced by the applicant / complainant. It was further submitted that the aspect of notice being properly served etc. was also not appreciated correctly by the Magistrate and that this Court may consider granting leave to appeal.

5. On the other hand, learned counsel appearing for the contesting respondent / accused submitted that as per admissions given in cross-examination by the applicant / complainant herself amounts in two tranches of ₹ 50 Lakhs each, totaling ₹ 1 Crore were given by the applicant and her husband to the contesting respondent. Two cheques of ₹ 50 Lakhs each were paid to the husband of the applicant, which were honoured and therefore, total amount of ₹ 1 Crore was returned. There was no question of any enforceable debt being available for the applicant to contend that subject cheques were issued in discharge of enforceable debt or liability. This aspect was correctly appreciated by the Magistrate, although it was conceded that in paragraph No.15 of the impugned judgment and order, the Magistrate erred in recording that amount of ₹ 50 Lakhs as per cheque No.10 was credited into

the account of the applicant. Nonetheless, it was submitted that admissions given by the applicant herself in cross-examination, read with statements of bank accounts of the applicant and her husband and also that of the accused would show that the finding eventually rendered by the Magistrate was correct and it was a possible interpretation of the material on record and that on preponderance of probabilities the respondent / accused had successfully rebutted the presumption that arises under Section 139 of the aforesaid Act.

6. This Court has perused the material on record. There can be no doubt that presumption under Section 139 of the aforesaid Act arises in such cases. Such presumption is indeed rebuttable on the touchstone of preponderance of probabilities. In the present case the Magistrate has appreciated the material on record to reach specific findings. On the face of it, this Court finds that the finding rendered in paragraph No.15 of the impugned judgment and order that cheque No.10 was issued in the account of the complainant and that same was honoured, cannot said to be correct, for the reason that, the documents available on record, as also the evidence shows that the aforesaid cheque No.10 was issued in the name of the husband of the applicant and it was honoured. Even if there is an admission on the part of the applicant that by a separate cheque an amount ₹ 50 Lakhs was credited in the account of the husband of the applicant, there is nothing on record to show that the amount of ₹ 50 Lakhs admittedly advanced by the applicant into the

account of the accused, was returned into the account of the applicant. To that extent, the applicant has been able to show an arguable case in her favour and hence, this Court is inclined to grant leave. As regards the other issue pertaining to the manner in which the notice was served upon the accused under Section 138 of the aforesaid Act, this Court deems it unnecessary to discuss the same, for the reason that on the aspect of legally enforceable debt or liability, an arguable case is indeed made out by the applicant in her favour.

7. In view of the above, the application is allowed and the leave is granted to the applicant to pursue appeal against the impugned judgment and order.

8. In view of the application being allowed, the Registry shall now register the appeal and place it before appropriate Court.

9. This Court is informed that the applicant is a senior citizen aged about 76 years. Hence, the Registry shall take appropriate steps expeditiously.

(MANISH PITALE, J.)