

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

REVISION APPLICATION NO. 138 OF 2019

Dinesh Pahilajrai Badlani
Age 35 years, Occ. - Business
R/a : M/s Deepak Plywood and Hardware,
Azad Colony, Next to Kalewadi Police
Chowky, Kalewadi, Pune - 17 ...Applicant

Vs.

1. M/s Sheeba Kuries Ltd.
A Company incorporated under
the Indian Companies Act, 1956
Officer at Sheeba Corporate House,
41-A, Bhau Patil Road, Pune
through representative -
Sudhakaran Nair
Age :- Adult, Occ. Service
2. State of Maharashtra
through the office of Public
Prosecutor, High Court, Mumbai ...Respondent

Mr. N. P. Deshpande - Advocate for the Applicant

Mr. Abhaykumar Apte - Advocate for the Respondent No. 1

Mr. H. J. Dedhia - APP for the Respondent-State

CORAM : S. M. MODAK, J.

DATE : 10th JANUARY 2024

JUDGMENT :-

1. Heard learned Advocate Shri Deshpande for the Applicant
and learned Advocate Shri Apte for the Respondent No. 1 and

learned APP.

2. The Applicant is convicted by the Court of the JMFC, Khadki as per Order dated 09/03/2015 for the offence punishable under Section 138 of the Negotiable Instruments Act. There is rigorous imprisonment for three months and compensation of Rs. 5,29,344/-. This judgment is confirmed by the Court of the Additional Sessions Judge, Pune on 28/02/2019. This Court has granted bail to the Applicant on 14/03/2019, on depositing 25% of the compensation amount. The amount of Rs. 1,32,333/- is deposited before the trial Magistrate.

3. There is concurrent findings by both the Courts below. Now the issue is whether there is any illegality. The findings recorded by the Courts below and is there any scope for interference. It is settled law that in such revision, the evidence cannot be re-appreciated but the Revisional Court has to see whether findings are perverse that is to say findings are arrived at by considering inadmissible evidence or by ignoring the admissible evidence.

4. With this view in mind, when the judgments of both the Courts below are perused, I do not find any illegality in those findings. The prosecution is for failure to make payment after

receipt of the notice in respect of dishonour of the cheque amounting to Rs. 5,44,344/-, dated 09/07/2011. It was dishonoured for the reason 'refer to drawer'. In spite of the notice issued in time, the Applicant has not paid the amount of the cheque. The complaint is filed in time. Both the parties adduced the evidence before the trial Court. The Complainant gave evidence through witness-Sudhakaran Nair and also relied upon various documentary evidence. Whereas accused has examined Smt. S. Shreenivasan, who is one of the Director of the Complainant's Company.

5. When the judgment of the trial Court is perused, what I find is the Complainant-Company runs a chit funds in Maharashtra. The accused was subscriber of the three chit fund group. Towards contribution the accused was in arrears that is why cheque was issued. The Complainant Company possess certificates from Joint Registrar of chit. The formalities under the Act were fulfilled.

6. One of the defence taken before the trial Magistrate was Complainant has not adduced any evidence through the authorized representative. Whereas there was notice issued by the accused to the Complainant-Company after filing of the complaint. In the said notice the Accused has admitted his

liability. He has also admitted that he is in arrears of the 213 installments. This was considered by the trial Court while rejecting his defence. The evidence was also challenged on the ground that the witness of the Company was not having authority. However the Complainant has filed the minutes of the meeting of the board of the Directors dated 22/01/2006 and 03/08/2012 (para no. 15) of the trial Court judgment. Trial Court observed those resolutions authorize the witness to represent the Company. The name of the Company is changed from Sheeba Finance and Kuries Pvt. Limited to Sheeba Finance and Kuries Limited and then to Sheeba Kuries Limited. The resolution to that effect were also filed, para no. 18. The complaint is filed in the latest name.

7. There was further contention about repayment of the amount and misuse of the cheque which was issued by way of security. However the trial Court considered what is stated by the accused in statement recorded under Section 313 of the Criminal Procedure Code. He has admitted that he has not paid one or two installments, para no. 20. The trial Court further observed that mere suggestion about using of the blank cheque given as security is not sufficient. There is presumption under Sections 118 and 139 of the Negotiable Instruments Act, para

nos 27 and 28. Further the theory of payment of Rs. 90,000/- could not be proved by the accused (para no. 23)

8. In nutshell, the trial Court concluded that the accused is unable to rebut the presumption. The trial Court concluded that the Complainant has complied all other formalities about proving the reason for dishnour (refer to drawer), receipt and service of the notice. The address was correct. Hence notice was served (para no. 33). That is how the conviction was arrived at.

9. When this judgment was challenged by the Applicant he has failed before the Appellate Court. As the trial Court has discussed the evidence in detail, the Appellate Court vide impugned judgment has confirmed the conviction. Though that judgment is short, there are findings recorded which are against the accused. Mere because of the judgment is short, it does not mean that it is erroneous.

10. In this revision, the Applicant has prayed various grounds. I have perused those grounds. It pertains to proof of the legally enforceable liability, representative of the Complainant is not having authority, legally issuance of the cheque towards security. I am afraid that these grounds can be taken in the revision. These grounds were already taken before the Courts

below. They were rejected. If these grounds are entertained in the revision, it will amount to re-appreciation of the evidence, which is not permissible.

11. For the above discussion, I do not find any illegality in the findings recorded by both the Courts below. Hence Order :-

ORDER

- a) Revision application is dismissed.
- b) The Respondent No. 1-Complainant is at liberty to withdraw an amount of Rs. 1,32,333/- from the trial Court on showing his identity.
- c) Let the Applicant to deposit remaining amount within a period of four weeks.
- d) The Applicant is also directed to surrender before the trial Magistrate. In case of failure, then Respondent No. 1 is at liberty to take necessary steps for execution of the judgment.

12. Pending interim application, if any, stands disposed of.

[S. M. MODAK, J.]