

(2018) 07 BOM CK 0123

In the Bombay High Court

Case No : Criminal Application (APPA) No.406 Of 2016 In Criminal Appeal
No.479 of 2018

M/S. Century Steel Traders, Thr. Proprietor Shri. Rajiv Shivaji Sharma **APPELLANT**

Vs

M/S. Polaris Steel Castings Pvt. Ltd. Thr. Directors Mr. Pushpendra Pramodkumar Mishra And Another **RESPONDENT**

Date of Decision : 31-07-2018

Acts Referred:

Negotiable Instruments Act, 1881 — Section 118, 138, 139

Citation : (2018) 07 BOM CK 0123

Hon'ble Judges : MANISH PITALE, J

Bench : Single Bench

Advocate : M.R. Sharma, M.D. Samel

Final Decision : Dismissed

Judgement

1. This court had issued notice on this application for grant of leave on 28.11.2017. The respondents entered appearance.

2. Heard counsel for the parties.

3. The applicant has placed on record sufficient material to demonstrate that case is made out for consideration of appeal against the impugned

judgment and order on merits. Hence leave to appeal is granted. This application is allowed and the appeal is directed to be registered.

Criminal Appeal No. 479/2018.

This is an appeal against acquittal of the respondents (original accused) for an offence punishable under Section 138 of the Negotiable Instruments

Act, 1881. By the impugned judgment and order dated 27.04.2016, the Court of Judicial Magistrate First Class and Special Court, Nagpur (trial

Court), while deciding Summary Criminal Case No. 8250/2012, held that the appellant failed to prove that he was the Proprietor and there was also

insufficient evidence on record to prove that the cheque in question was indeed signed by the respondents or that the same had been issued in

discharge of legal debt or liability.Â On this basis, the respondents (original accused) have been acquitted.Â

2. According to the appellant (original complainant) M/s Century Steel Traders was a proprietary concern of which Rajiv Shivji Sharma was the

Proprietor.Â The said proprietary concern was in the business of sale and purchase of steel and supply ofÂ M.S. scrap.Â The respondents were

Directors of the respondent Company M/s Polaris Steel Casting Pvt. Ltd. and that they had allegedly contacted the appellant for supply of M.S. scrap

and steel.Â On this basis, on 27.02.2011 the appellant gave a quotation to supply M.S. scrap to the respondents @ Rs.25,500/- per metric tonne.Â

On this basis, the respondents allegedly placed an order of 1000 metric tonnes ofÂ M.S. scrap for a total amount of Rs.2,55,00,000/- on 1.3.2011.Â

It was the case of the appellant that thereafter on 25.03.2011, 96 tonnes of M.S. scrap was delivered to the respondents and similarly on 6.4.2011,

further 11 tonnes of M.S. scrap was delivered.Â It was the case of the appellant that the respondents had sent their trucks to the godown of the

appellant where the material was loaded.

3. It was the case of the appellant that the respondents were avoiding to make payment for delivery of the said material, but finally they issued a post

dated cheque for an amount of Rs.27,33,850/- bearing the date 5.3.2012 in favour of the appellant.Â On the said cheque being deposited in the Bank,

it was dishonoured with the remark â??account is closedâ?. As a consequence, the appellant sent a notice to the respondents to which there was no

response and eventually the appellant was constrained to file complaint before the trial Court.

4. The defence of the respondents was that they did not receive the notice issued by the appellant.Â Â They denied the signature on the disputed

cheque, claiming that the appellant in connivance with their Manager had obtained the disputed cheque and filled the contents therein and that the

cheque had been misused.Â The respondents examined a handwriting expert to prove that the signatures on the disputed cheque and the alleged

purchase order and delivery challans were forged and that no such transaction ever took place between the parties. A specific objection was also

taken by the respondents that the appellant was not Proprietor of M/s Century Steel Traders and that, therefore, he had no authority to file the complaint.

5. The appellant relied upon documentary evidence in the form of quotation dated 27.02.2011 (Exh.37), purchase order dated 1.3.2011 (Exh.38),

delivery challans dated 25.03.2011 and 6.4.2011 (Exhs. 39 and 40) and disputed cheque dated 5.3.2012 (Exh.41). The appellant entered the witness

box in support of his complaint. In the cross-examination, the complainant (appellant) admitted that in Exhs. 37 and 38 i.e. the quotation dated

27.02.2011 and purchase order dated 1.3.2011, he had not signed as the Proprietor but as authorized signatory. It was also admitted by him that he

was not the Proprietor of M/s Century Steel Traders and that he had no documents in support of being Proprietor. There were other admissions made

in the cross-examination which will be referred to later. The evidence of the appellant was closed.

6. The respondents examined a handwriting expert to show that the signatures on the disputed cheque and the aforesaid other documents were

forged. The handwriting expert was cross-examined and he stated that he was not provided with original documents and that he had given opinion

on the basis of the photocopies.

7. After the evidence was closed and the complaint was to be decided, the appellant filed an application for placing on record documents from the

office of the Inspector under the Bombay Shops and Establishment Act, 1948, showing that the complainant was indeed the Proprietor of M/s Century

Steel Traders (appellant). This was opposed by the respondents and by order dated 22.12.2015, the trial Court rejected permission to the appellant

(complainant) to file certificate/document issued by the Inspector under the Bombay Shops and Establishment Act, 1948. This order was challenged

by the appellant by filing Criminal Writ Petition No. 58 of 2016 before this Court. By judgment and order dated 20.01.2016, this Court allowed the

writ petition, setting aside the said order of the trial Court and allowed the appellant to file the said document, granting liberty to both sides to lead such

evidence as was necessary, strictly restricted to the said document. Liberty was

also reserved in favour of the respondents to make submissions as to the effect of aforesaid admission in cross-examination on the question of whether the complainant was indeed Proprietor of M/s Century Steel Traders.

8. The said judgment and order of this Court was challenged before the Honâ??ble Supreme Court by the respondents.Â On 26.02.2016, the

Honâ??ble Supreme Court disposed of the special leave petition filed by the respondents, observing that it would be open for them to file an

application before the Magistrate (trial Court) to call for original records so as to test the veracity of the certificate produced by the appellant herein.

9. As a consequence, the certificate issued by the Inspector under the Bombay Shops and Establishment Act, 1948 dated 27.01.2014 was marked as

Exh.126.Â The respondents filed an application (Exh.137) before the trial Court praying for de-exhibiting the said document and the additional

affidavit in evidence filed on behalf of the appellant, on the ground that the complainant was not the author of the said document and that original

record from the office of the Inspector under the Bombay Shops and Establishment Act, 1948, was required to be called to test the veracity of the

said certificate.Â In view of the specific liberty granted by the Honâ??ble Supreme Court in the order dated 26.02.2016, the said application was in

terms of the said liberty.Â Yet, the complainant filed its reply and opposed the said application on the ground that there was no provision for de-

exhibiting the document.Â By order dated 17.03.2016, the aforesaid application filed by the respondent (Exh. 137) was dismissed by the trial Court.Â

10. Thereafter, the complainant was examined in the light of the said certificate placed on record.Â In the cross-examination, the complainant stated

that he received the aforesaid certificate from the Inspector under the Bombay Shops and Establishment Act, 1948 (Exh.126) on 23.01.2014. It is

relevant that the said document was dated 27.01.2014 as it was signed after renewal by the Inspector on the said date. Yet, the complainant claimed

that he had received it on 23.01.2014 itself.Â He further could not state the exact address ofÂ the office from where he had received it although the

said document had been with him from 23.01.2014.Â He again conceded that in the documents at Exhs. 37, 38, 39 and 40 pertaining to the

transaction between the parties, he had not signed as the Proprietor.

11. The trial Court took into consideration the aforementioned evidence and material on record and by the impugned judgment and order, it found that even the said certificate at Exh.126 was not sufficient to prove that the said complainant Rajiv Shivji Sharma was indeed the Proprietor of the appellant M/s Century Steel Traders.Â Consequently the complaint was itself found to have been filed without authority. Apart from this, the trial Court found that the evidence of the handwriting expert and his report demonstrate that there was serious doubt about whether the signatures on the disputed cheque and the documents on record were that of the respondents.Â It was also found that there was lack of evidence placed on record by the appellant to show that delivery of M.S. scrap was indeed made to the respondents.Â On this basis, the trial Court found that the appellant had failed to prove its case and accordingly the respondents stood acquitted.

12. Mr. M.R. Sharma, learned counsel appearing for the appellant, submitted that the findings rendered by the trial Court were unsustainable.Â It was submitted that on the question of whether the said Rajiv Shivji Sharma was Proprietor of the appellant M/s Century Steel Traders, the trial Court committed a grave error in disbelieving the certificate at Exh.126 and that statements made in cross-examination by the complainant were misinterpreted by the trial Court to hold against the appellant.Â It was submitted that once the said certificate was exhibited as Exh.126 and objection was not raised on behalf of the respondents at the first available opportunity, they could not be permitted to dispute the same. It was submitted that the document was issued by a public authority and under the provisions of the Evidence Act, 1872, no further proof was required to be placed on record by the appellant to prove that said Rajiv Shivji Sharma was indeed the Proprietor.Â It was further submitted that reliance placed on the report of the handwriting expert and his evidence, was misplaced and that the findings rendered by the trial Court in this regard were perverse.Â It was further submitted that the trial Court erred in holding that the appellant had failed to prove the transaction between the parties, when there was sufficient material on record to show that presumptions under Sections 118 and 139 of the Negotiable Instruments Act, 1881 operated in favour of the appellant.Â It was submitted that in view of the detailed documentary and oral evidence placed on record, the appellant had indeed proved that the

disputed cheque had been issued in discharge of legal debt and yet the trial Court had erroneously acquitted the respondents.

13. Per contra, Mr. M.D.Samel, learned counsel appearing on behalf of the respondents, submitted that the trial Court was justified in acquitting the

respondents because the complaint filed on behalf of the appellant was itself filed by a person who had no authority, as there was no evidence on

record to prove that the said Rajiv Shivji Sharma was indeed Proprietor of the appellant M/s Century Steel Traders.Â It was submitted that objection

to the said document/certificate at Exh.126 was raised immediately on behalf of the respondents. In fact specific application was filed by the

respondents for calling the original record from the office of the Inspector under the Bombay Shops and Establishment Act, 1948, which was opposed

by the appellant, despite liberty granted by the Honâ??ble Supreme Court and that in these circumstances, the contention raised on behalf of the

appellant deserved to be rejected.Â Apart from this, it was pointed out that the evidence of the handwriting expert was sufficient to show that the

signatures on the disputed cheque and other documents were forged.Â The admissions made in cross-examination by the witness of the appellant

were sufficient to show that there had been no transaction between the parties and that the entire complaint was based on false assertions.Â It was

submitted that there was sufficient material to show that the defence of the respondents was probable and that since the trial Court had taken a

possible view in the matter, the appeal deserved to be dismissed.

14. Heard counsel for the parties.Â There are two issues that arise in the present appeal.Â Firstly, whether the said Rajiv Shivji Sharma was entitled

to claim that he wasÂ a Proprietor of the appellant M/s Century Steel Traders and secondly, whether the appellant had proved the foundational facts

regarding the transaction between the parties, supply of M.S. scrap to the respondents and issuance of disputed cheque by the respondents towards

payment for such supply.Â In case such facts stood proved, the presumption would obviously operate in favour of the appellant.

15. In order to decide the first issue, it is necessary to peruse the certificate at Exh.126 and the evidence of the witness for the appellant, who claimed

to be the Proprietor i.e. Rajiv Shivji Sharma.Â The evidence of this witness both prior to and after bringing on record the said document is required to

be appreciated to analyse as to whether the finding rendered by the trial Court was justified.Â The said witness entered the witness box in support of the complaint.Â In his evidence, he reiterated the grievance raised in the complaint that the disputed cheque was issued by the respondents for payment towards supply of M.S.scrap, for which the purchase order and delivery challans were relied upon.Â In the cross-examination, prior to the document at Exh.126 coming on record, the said witness had admitted that the word 'Proprietor' was not found beneath his signature in the documents at Exh.37 (quotation dated 27.02.2011) and Exh.38 (purchase order dated 1.3.2011).Â It was further admitted that he had signed as authorized signatory in the aforesaid document at Exh.38.Â He further admitted that he was not the Proprietor of the complainant (appellant) and further that he had not filed any document in that regard.Â He stated that he was looking after the work of the complainant (appellant) since 2007-2008. Thus, the aforesaid admissions made in the cross-examination by the said witness clearly demonstrated that he was not the Proprietor of the complainant (appellant).

16. But, after his application for placing on record aforesaid certificate (Exh.126) was allowed by this Court, the said certificate came on record and according to the appellant it was sufficient to prove that the said Rajiv Shivji Sharma was indeed the Proprietor of the appellant.Â A perusal of the said document shows that the renewal of the licence under the Bombay Shops and Establishment Act, 1948 was on 23.01.2014 and that the Shop Inspector had signed the said certificate/document on 27.01.2014, showing that the said Rajiv Shivji Sharma was the Proprietor of the appellant. According to the appellant, the said certificate (Exh.126) being a public document, no further proof was required.Â But, the orders passed by this Court and the Honâble Supreme Court, in the context of permission to place the said document on record, become relevant.Â This Court in its order dated 20.01.2016, while allowing the appellant to place on record the said certificate (Exh.126) had granted liberty to both sides to lead evidence in respect of the said document.Â The Honâble Supreme Court, in its order dated 26.02.2016, had observed that it was open for the respondents to file an application before the trial Court to call for the original record in order to test the veracity of the said certificate (Exh.126).

17. In this situation, when an application (Exh.137) was filed by the respondents before the trial Court for de-exhibiting of the said certificate (Exh.126) and for calling the original record to test its veracity, the appellant opposed the said application.Â This conduct on the part of the appellant clearly shows that it had something to hide.Â In view of the specific liberty granted by the Honâ??ble Supreme Court, the application filed by the respondents could not have been opposed by the appellant.Â Yet, it was opposed and the trial Court by its order dated 17.03.2016 rejected the application of the respondents. In this situation, it clearly does not lie in the mouth of the appellantÂ that the respondents had not objected to the said certificate Exh.126 being taken on record at the first available opportunity.Â Such objection was raised by them before the trial Court and it had been accepted, but the writ petition filed by the appellant was allowed by this Court, on the condition that the parties were at liberty to lead evidence pertaining to the said document and furthermore the Honâ??ble Supreme Court had granted liberty to the respondents to apply to the trial Court to call for the original record to test the veracity of the said certificate at Exh.126.Â Therefore, the contention raised on behalf of the appellant that once the said certificate was exhibited at Exh.126 before the trial Court, the respondents were not entitled to dispute the same or raise any objection to the same, is absolutely baseless and it cannot be accepted. Reliance placed on behalf of the appellant on the Division Bench judgment of this Court in the case of Hemendra Rasiklal Ghia .vs. Subodh Mody-Â 2008 (6) Mh.L.J. 886 is wholly misplaced.Â The said certificate Exh.126 on its own could, therefore, not become the basis for the said Rajiv Shivji Sharma to claim that he was the Proprietor of the appellant.

18. In this context, the cross-examination of the said witness of the appellant after the certificate at Exh.126 was brought on record, becomes even more significant.Â During this cross-examination, the said witness stated that he received the certificate Exh.126 on 23.01.2014.Â He stated that he personally went to the concerned office of the department on 23.01.2014 to collect the said certificate Exh.126.Â But, he admitted that he did not know the detailed address of the office from where he collected the said document.Â He also stated that the said certificate Exh.126 was with him from 23.01.2014 when he had collected the same.Â It isÂ significant that the said certificate Exh.126 shows that the Shop Inspector had signed the

same on 27.01.2014.Â It is, therefore, inexplicable as to how the appellant received the said document on 23.01.2014 itself, when it was signed and issued by the Shop Inspector on 27.01.2014.Â The said factors brought out in the cross-examination of the witness, read with the certificate Exh.126 dated 27.01.2014, demonstrate that the said certificate is rendered highly suspicious and doubtful.Â In this backdrop, the opposition on behalf of the appellant in calling for the original record from the office of the Inspector under the Bombay Shops and Establishment Act, 1948, shows that the said Rajiv Shivji Sharma had no evidence to prove that he was indeed the Proprietor of the appellant.Â Therefore, the finding rendered by the trial Court in this regard cannot be interfered with.Â The said Rajiv Shivji Sharma had no authority to file the complaint on behalf of the appellant and on this ground alone the complaint deserved to be rejected.

19. As regards the claim of the appellant that presumption under Sections 118 and 139 of the Negotiable Instruments Act, 1881 operated in its favour, it was first necessary for the appellant to have proved the foundational facts in support of its complaint.Â The case of the appellant was that the respondents had expressed their desire to purchase M.S. scrap from it and in that regard quotation dated 27.02.2011 (Exh.37) had been issued.Â The purchase order dated 1.3.2011 (Exh.38) was allegedly placed for 1000 tonnes of M.S. scrap by the respondents and that by delivery challans dated 25.03.2011 and 6.4.2011 (Exhs. 39 and 40) 96 tonnes and 11 tonnes of M.S. scrap were allegedly delivered by the appellant to the respondents.Â It was claimed that the disputed chequeÂ dated 5.3.2012 (Exh.41) was issued by the respondents for the supply of the said amount of M.S. scrap.Â In this regard, the defence of the respondents was that the signatures on all the said documents were forged and that the cheque had been misused.Â It claimed that there had been no transaction between the parties.Â In support of the said defence, the respondents had examined a handwriting expert and his report was also brought on record.Â According to the report of the handwriting expert, the signatures on the said documents were not those of the respondents.Â It was contended on behalf of the appellant that the crossexamination of the handwriting expert had completely demolished the said evidence of the expert.Â

20. A perusal of the report of the handwriting expert shows that according to him

there was difference in signatures. The handwriting expert appeared as a witness and deposed about the manner in which he had come to the said conclusion. In cross-examination, the said witness admitted that he had prepared the report by examining disputed signatures from photocopies and comparative signatures in original. He also admitted that there was possibility of alterations in photocopies of documents and that if the original documents were produced then the report would be 100 %. It is on these admissions made by the said witness that the appellant has emphasized, in order to claim that the report deserved to be disbelieved. But, a perusal of the record shows that the copies of the disputed documents were given to the expert after they were obtained from the original record of the Court. Certified copies were obtained from the original record of the Court and the handwriting expert proceeded on the basis of such material. In this situation, it cannot be said that the trial Court was not justified in relying upon the said report and the evidence of the handwriting expert. The trial Court found that the credibility of the said report and the witness were not shaken in cross-examination. The said finding of the trial Court cannot be said to be wholly erroneous because if copies obtained from the original record of the Court were made available to the expert, a report prepared on the basis of the same could not be said to be spurious. In any case, the expert was not cross-examined on the merits of the opinion given by him. In this situation, reliance could be placed on the report. If that be so, there was material to show that the presumption under the provisions of the said Act was not triggered in the present case.

21. Apart from this, cross-examination of the witness who appeared on behalf of the appellant on the nature of transactions between the parties also becomes important. A perusal of the cross-examination of the said witness shows that he has clearly admitted that the appellant had no transaction prior to 2012 with the respondents. This means that the transaction on the basis of which the complaint was filed, was the first and only transaction between the parties. The said witness further admitted that he had no material to show that the aforesaid amount of M.S. scrap was actually delivered to the respondents, other than the aforesaid two delivery challans (Exhs. 39 and 40 dated 25.03.2011 and 6.4.2011). He could not explain as to why there was no mention of any order number, date of the order and

other details in the said delivery challans. He could not explain as to why details pertaining to the trucks like their registration number etc. were not mentioned in the said challans or any document to show that delivery of M.S. scrap totaling 107 tonnes was actually made to the respondents. The said witness also stated that he did not know as to whether the ink on the disputed cheque pertaining to the signature and other contents was different. It was also not explained as to why the disputed cheque was dated 5.3.2012, when the delivery of the said material had been already made to the respondents on 25.03.2011 and 6.4.2011. It was not explained as to why, when there was a provision for penalty for late payment beyond 15 days, it was not imposed on the respondents. The appellant has also failed to explain that if the disputed cheque was issued for supply of total 107 metric tonnes of M.S. scrap at the rate of Rs.25,500/- per metric tonne, why was the amount more than the value of the said amount of material.

22. The aforesaid admissions made in the cross-examination by the witness for the appellant demonstrate that there was insufficient evidence to show that the disputed cheque was indeed issued for supply for material as claimed by the appellant. A serious doubt was created about such transactions having taken place between the parties. Therefore, there was hardly any evidence on record placed by the appellant to prove foundational facts pertaining to the claims made. In such a situation, the appellant was not justified in claiming that presumptions under Sections 118 and 139 of the Negotiable Instruments Act, 1881, operated in its favour.

23. The trial Court took into consideration the entire evidence and material on record and found that not only was the appellant unable to prove that the said Rajiv Shivji Sharma was its Proprietor, but it had also failed to prove that the disputed cheque pertained to discharge of legal debt or liability.

The entire case of the appellant was rendered suspicious and not believable. The analysis of the evidence and material on record by the trial

Court cannot be said to be erroneous and the findings are not perverse. It is certainly a possible view taken by the trial Court on the basis of the oral

and documentary evidence on record. Not only was the complaint filed by a person who had no authority to file the same, but the signatures on

the disputed cheque and other documents appeared to be forged and in any case, there was lack of credible evidence to show that there had been

transactions between the parties for which the respondents had issued the cheque in discharge of legal debt or liability.

24. It is trite that in criminal jurisprudence when two views are possible, the view that is in favour of the accused is to be adopted.Â The trial Court in

the present case has taken a possible view of the matter and there is no reason why the same is required to be reversed.Â The appellant has failed to

demonstrate any justifiable reason for interfering with the impugned order passed by the trial Court.

25. The appellant filed Criminal Application Nos. 203 of 2018 and 256 of 2018 under Sections 311 read with 391 of the Code of Criminal Procedure,

1973 (Cr.P.C.) seeking permission to place on record documents and for permission to lead further evidence and to call and examine Inspector from

the Department of Shops and Establishment.Â The said applications moved on behalf of the appellant cannot be permitted at this stage.Â The

reliance placed on behalf of the appellant on the judgment of the Honâ??ble Supreme Court in the case of Ashok TsheringÂ Bhutia .vs. State of

Sikkim-Â (2011) 4 Supreme Court Cases 402 in this regard, is also misplaced.Â In the said judgment, the Honâ??ble Supreme Court has laid down

that additional evidence at belated stage is permissible in case of failure of justice.Â But, it is further laid down that such power is to be exercised

sparingly and only inÂ exceptional cases where the Court is satisfied that permitting additional evidence would serve the interest of justice.Â It is laid

down that it would depend upon the facts and circumstances of the individual case as to whetherÂ such permission was to be grantedÂ and further

that it should be generally invoked when formal proof for the prosecution is necessary.Â The said position of law does not favour the appellant in the

present case at all.Â These applications are clearly an after thought and a feeble attempt to support the contentions raised on behalf of the appellant.

The said applications pertain to an attempt on the part of the appellant to prove that that the said Rajiv Shivji Sharma was indeed the Proprietor of the

appellant.Â This is an attempt to demonstrate that the complaint was filed by an authorised person.Â The appellant has failed to make out a case for

adducing additional evidence at this stage.Â Even otherwise, this Court has found that on merits the appellant has absolutely no case.Â Therefore,Â

the present Criminal Application Nos. 203 of 2018 and 256 of 2018 deserve to be dismissed.

26. In the light of the above, the present appeal is found to be without any merit and it is dismissed.Â Consequently the impugned judgment and order passed by the trial Court acquitting the respondents is confirmed.Â Criminal Application Nos. 203 of 2018 and 256 of 2018 are also dismissed.