
(2006) 12 BOM CK 0101

In the Bombay High Court

Case No : Criminal Application No. 3741 of 2004

Narendra Anantsing Kachave

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 08-12-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378, 378(4)
Negotiable Instruments Act, 1881 (NI) — Section 138, 139

Citation : (2007) 4 BC 188 : (2007) 1 BomCR 972

Hon'ble Judges : V.M. Kanade, J

Bench : Single Bench

Advocate : Ashish S. Gaikwad, for the Appellant; U.V. Nikam, PP. for Respondent No. 1 and S.G. Kudke, for the Respondent

Final Decision : Dismissed

Judgement

V.M. Kanade, J.—The learned Counsel appearing on behalf of the appellant and the learned Counsel appearing on behalf of the respondents.

2. This application is filed by the appellant for special leave to appeal u/s 378(4) of Cr.P.C. challenging the judgment and order passed by 3rd Additional Sessions Judge, Pandharpur whereby Sessions Court set aside the judgment and order passed by the Trial Court and acquitted the respondent No. 2 for the offence punishable u/s 138 of the Negotiable Instruments Act.

3. Brief facts which are relevant for the purpose of deciding this application against acquittal are as under:

Appellant is a proprietor of Narendra Enterprise, Kisan Agro Agency, Mangalwedha. He filed complaint u/s 138 of NI Act against the respondent No. 2 bearing S.T.C. No. 30/02 in which it was alleged that respondent No. 2 had purchased Drip Irrigation System from his shop worth Rs. 38,663/- and respondent No. 2 issued a cheque on 12.11.2001 for Rs. 20,500/-. Respondent No. 2 also promised to pay balance amount within eight days. However, the

cheque which was deposited in the Bank was dishonoured for want of funds. Statutory notice was issued by the appellant. However, respondent No. 2 did not give any reply to the notice and, therefore, complaint was filed. Appellant examined three witnesses and after appreciating evidence, learned Magistrate found the respondent No. 2 guilty u/s 138 of N.I. Act. Against the said judgment and order, appeal was preferred by the respondent No. 2 in the Court of 3rd Additional Sessions Court, Pandharpur. The 3rd Additional Sessions Judge, Pandharpur after hearing the parties allowed the appeal and acquitted the respondent No. 2.

4. Learned Counsel for the appellant has submitted that 3rd Additional Sessions Judge, Pandharpur, had erred in acquitting the respondent No. 2. He further submitted that all the ingredients of Section 138 of N.I. Act had been proved by the appellant and, therefore, there was no reason for the Sessions Court to interfere with the findings recorded by the learned Magistrate. He submitted that it was established that cheque was issued by the respondent No. 2 to the appellant. He further submitted that appellant had sold Drip Irrigation System to the respondent No. 2 and in view of the presumption raised u/s 139 of N.I. Act to establish that this was towards debt and liability due and payable by the respondent No. 2, he invited my attention to the findings recorded by the lower Appellate Court. He further submitted that once it was established that the cheque was handed over by the respondent No. 2 to the appellant, presumption u/s 139 of N.I. Act was raised and that no material was placed to rebut the said presumption. He also relied on the judgment of Supreme Court in the case of ICDS Ltd. v. Beena Shabeer and Anr. III (2002) BC 310 : III (2002) CCR 139 : 2002 SCC 1342. He invited my attention to para 10 in respect of said submission, which reads as under:

The language, however, has been rather specific as regards the intent of the Legislature. The commencement of the section stands with the words "Where any cheque". The above noted three words are of extreme significance, in particular, by reason of the use of the word "any" the first three words suggest that in fact for whatever reason if a cheque is drawn on an account maintained by him with a Banker in favour of another person for the discharge of any debt or other liability, the highlighted words if read with the first three words at the commencement of Section 138, leave no manner of doubt that for whatever reason it may be, the liability under this provision cannot be avoided in the event the same stands returned by the Banker unpaid. The Legislature has been careful enough to record not only discharge in whole or in part of any debt but the same includes other liability as well. This aspect of the matter has not been appreciated by the High Court, neither been dealt with or even referred to in the impugned judgment.

5. Learned Counsel for the respondent No. 2 vehemently opposed the submission raised by the learned Counsel for the appellant. He submitted that there was no interference with the judgment and order passed by 3rd Additional Sessions

Judge. He submitted that lower Appellate Court had given cogent reason by allowing appeal filed by the respondent No. 2 and there is no reason to interfere with the said judgment and order particularly when the High Court has exercised its jurisdiction u/s 378 of Cr.P.C.

6. It is not possible to accept the submissions made by the learned Counsel for the appellant. Finding is recorded that the cheque issued by the respondent No. 2 was a blank cheque. Taking into consideration the various circumstances and also after recording admissions given by the appellant, lower Appellate Court has, further observed that the appellant herein did not state in his evidence that handwriting on the cheque was that of the respondent No. 2. Thereafter, the lower Appellate Court has proceeded to consider the evidence on record and more particularly the admissions given by the appellant. Lower Appellate Court observed that appellant had not established that there was a transaction between appellant and the respondent No. 2, as he had failed to produce any voucher, bill in support of his case. Lower Appellate Court has further come to the conclusion that the appellant had not established that there was debt or liability due and payable by the respondent No. 1.1 do not see any infirmity in the observations made by the lower Appellate Court. Special leave to the appeal is rejected.

Criminal application is disposed of accordingly.