

(2010) 12 BOM CK 0131

In the Bombay High Court

Case No : Criminal Revision Application No. 146 of 2001

Parmanand Aggarwal

APPELLANT

Vs

Ashok Underlal and The State of Maharashtra

RESPONDENT

Date of Decision : 13-12-2010

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : AIR 2012 Bom 11

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

Bench : Single Bench

Advocate : None, for the Appellant; Ashok Wanwari and M.R. Tidake, APP for State, for the Respondent

Judgement

V.M. Kanade, J.—Heard the learned Counsel appearing on behalf of the Respondent No. 1.

2. Initially the matter came up for hearing on 24.11.2010 and it was adjourned by one week and thereafter, it was adjourned by one week and the learned Counsel for the Applicant was told that no further adjournment will be granted. In spite of that, none appeared on behalf of the Applicant on 1st December, 2010. Thereafter, as a last chance matter was kept on 3.12.2010. After the said order was passed, the learned Counsel for the Applicant appeared in the matter and she stated that she would appear on 10.12.2010. In fact, on 24th November, 2010 itself I had with her assistance gone through the judgments and orders passed by both the Lower Courts, she had made her submissions. Today, however, she is not present in the Court. I have heard the learned Counsel appearing on behalf of the Respondent No. 1 at length.

3. The present revision application is filed challenging the judgment and order passed by the Metropolitan Magistrate, 33rd Court at Bellard Pier, Mumbai who was pleased to convict the accused for the offence punishable u/s 138 of the Negotiable Instruments Act and sentenced to suffer S.I. for six months and to pay fine of Rs. 49,750/-and, in default, to suffer S.I. for one month. He directed

that an amount of Rs. 25,875/-be given to the Complainant by way of compensation. Thereafter he challenged this order before the Sessions Court. The Sessions Court confirmed the order of the Trial Court. However, had altered the sentence and reduced the amount of compensation to Rs. 5,000/-and, in default, to further S.I. for fifteen days. A direction was given to pay this amount to the complainant. The Respondent No. 1 filed a complaint in which he alleged that he is the broker and the Applicant -Original Accused had purchased shares on or about 6th August, 1993. A contract note was given for the said transaction and thereafter, a cheque for an amount of Rs. 24,875/-was issued by the accused in discharge of the said liability. The said cheque, however, was dishonoured after the complainant presented it in his bank. After the demand statutory notice was served on the applicant and upon non-payment of the said amount, the complaint was lodged u/s 138 of the Negotiable Instruments Act.

4. The complainant examined himself and PW-2, both the bank officers. The accused examined one witness. The Trial Court on the basis of the evidence adduced by the parties, convicted the accused. The Sessions Court in appeal had confirmed the findings though it reduced the amount of compensation.

5. It was urged by the learned Counsel for the Applicant that the shares were never delivered to the Applicant and hence, there was no question of payment of consideration. It was submitted that since the shares were not delivered, no liability arose on the part of the Applicant to make the payment and, therefore, the blank cheque was without any consideration.

6. On the other hand, the learned Counsel appearing on behalf of the complainant submitted that the shares were purchased by the Complainant and the amount was paid by him on behalf of the accused and, therefore, the liability had arisen. The accused had deliberately not taken delivery of the shares. However, they did not absolve him from the liability which has arisen.

7. In my view, both the Courts below have given cogent reasons for not accepting the defense of the accused that the blank cheque was given towards security. Hence, no case is made out for interfering with the judgments and orders passed by both the Courts below. Criminal Revision Application is, therefore, dismissed and disposed of.