
(2011) 10 BOM CK 0075

In the Bombay High Court

Case No : Criminal Writ Petition No. 3100 of 2011

Pradip S. Dixit

APPELLANT

Vs

State of Maharashtra and Mr. Lalit More

RESPONDENT

Date of Decision : 18-10-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397
Negotiable Instruments Act, 1881 (NI) — Section 139, 145

Citation : (2012) BomCR(Cri) 461

Hon'ble Judges : K.U. Chandiwal, J

Bench : Single Bench

Advocate : K.H. Giri, for the Appellant; R.V. Newton, APP for State, for the Respondent

Judgement

K.U. Chandiwal, J.

Rule made returnable forthwith. No notice to the Respondent no.2

1. Heard learned counsel for the Accused- Applicant. The conviction recorded by the learned Metropolitan Magistrate, 7th Court, Dadar, Mumbai by order dated 10.5.2011 was questioned before the learned Sessions Court in Criminal Revision Application No.118 of 2011. By an order dated 19.9.2011 the learned Additional Sessions Judge dismissed the Revision. Hence the writ.

2. The case propounded by the Complainant-respondent No.2 was, he has carried out activities of supply of CC TV cameras and lodged installations at hotel of the Accused-Applicant. It was on going process of 4/5 bills since 2007,2008. There was another contract in January,2009. Contract of January,2009 was extended up to June, 2009. After the work as per schedule in discharge of liability the Accused-Applicant has issued a cheque dated 7.5.2009 drawn on Allahabad bank in the sum of Rs.3,50,000/- (Three lacs fifty thousand only). The said cheque on presentation was dishonoured. Consequently, statutory notice was issued. The Accused-Applicant denied that the cheque was in discharge of

the entire liability, as according to the Accused-Applicant still the work was left to be completed and certain deficiencies were noticed by him. After statutory notice complaint was filed. Process was issued to the accused. The accused claimed that he has issued a blank signed cheque in favour of the Complainant for security and without completing the contract misused the said cheque.

3. Learned counsel for the Writ Petitioner (accused) has raised following points :

(a) The learned Judge erroneously relied on

(b) The verification of the affidavit in chief is defective.

(c) The reply notice dated 15.6.2009 did not meet rejoinder from the complainant/respondent.

d) There does not stand any legally enforceable liability and consequently no presumption in terms of section 139 of Negotiable Instrument Act.

4. Before advertng to the contentions raised by learned counsel for the Applicant-Accused one fact is to be taken into consideration that as against conviction the revision was preferred by the accused applicant as stated above and after getting the Revision dismissed Writ Petition is filed before this court. Consequently, it is needless to indicate that scope of Writ Petition is very limited. Law does not permit to entertain the said Writ Petition to canvass factual details and disputes as there is specific bar u/s 397(3) of Cr.P.C. However learned counsel has elaborately dealt with evidence, read the reply notice and even the arguments tendered before the learned Judge particularly page 72 (para 6). learned counsel reiterate reading portions of the judgment the findings are contrary to the record.

5. Having gone through the judgment, I find no error of facts or law can be attributed to either the learned Metropolitan Magistrate or to the learned Revisional Court. There is no miscarriage of justice or failure of justice.

6. The documents which were purportedly produced below Exhibit 27 by the complainant are not considered by the learned Judge barring giving a reference, that such documents were indeed produced by complainant for court's satisfaction as asked by learned Judge.

7. On the point of verification learned counsel for the Applicant-Accused has pointed to chapter 7 of Criminal Manual dealing with affidavits and relied on the judgment reported in:

(1) AIR 1970 SUPREME COURT 652 (AAK NAMBIAR VS UNION OF INDIA & ANR) para 11 therein.

2) MR.EVAN NORONHA VS MR./LLOYD JOSEPH SIQUEIRA 2009 All MR (Cri) 1058.

(3) 1989 (1) Bom. C.R.337 (RAJENDRA GANDHI VS STATE OF MAHARASHTRA)

In the matter of AKK NAMBIAR, observations of Their Lordships in para 11 being

of 3100.11 importance are produced hereinafter:

11. The reasons for verification of affidavits are to enable the court to find out which facts can be said to be proved on the affidavit evidence of rival parties. Allegations may be true to knowledge or allegations may be true to information received from persons or allegations may be based on records. The importance of verifications is to test the genuineness and authenticity of allegations and also to make the deponent responsible for allegations. In essence verification is required to enable the court to find out as to whether it will be safe to act on such affidavit evidence. In absence of proper verification, affidavits cannot be admitted in evidence.

8. In the light of the observations of the Supreme Court let us see the factual details of the present case. At page 23 of the petition, verification of the Affiant/Complainant is reproduced, which reads:

Verification

I, Lalit More, the Complainant above named, aged 43 years, Prop. of M/s Auto Control Systems, having office No. 2 Sankalp, A-wing, Film City Road, Malad (E) Mumbai 400 097, do hereby state and declare on solemn affirmation that whatever stated in foregoing paragraphs above are true and correct to the best of my knowledge and belief.

Solemnly affirmed at Mumbai

this 24th day of November, 2010

Complainant

Explained & Identified by me

s/d

(S.H. Tiwari) Advocate High Court

Wadala, Mumbai-400 031. Before me,

Learned counsel submits that this verification is short of informing that what are facts to the personal knowledge of the Complainant and what he derived from the source from the Attorneys.

9. There cannot be quarrel on legal proposition and also the guidelines indicated in the Criminal Manual as to how affidavits are to be sworn in. However, verification in the instant case needs to be seen on the factual matrix as it was examination-in-chief of the Complainant in the form of an affidavit. The details in the examination-in-chief from para 1 to para 10 informed everything of the personal knowledge and the transaction the Complainant (Respondent No.1) had with the accused (Writ Petitioner). There is nothing in the examination-in-chief of the Complainant to borrow that he had gathered certain information from any other source. There is no garble to his stand. This position is clear concerning

verification of affidavit as indicated in section 145 of Negotiable Instrument Act and as to which contingency affidavit to be read in evidence in any inquiry. Hence, facts as has-been stated by complainant certainly within his own knowledge and which is in tune to requirement in manual and even as per para 11 the Supreme Court indicated in the matter of AKKNAMBIAR.

10. Learned counsel for the Accused-Applicant stated that there was no legal enforceable liability. He has relied on the judgment of Hon"ble Supreme court in the matter of (1) Rangappa v. Srimohan 2010 All SCR (Cri) 1349 this Court (2) In the matter of Mr. Evan Noronha vs Mr. Lloyd Joseph Siqueira 2009 All Mr. Cri) 1058 and (3) in the matter of Sasha Krishna Umredkar v. H.K. Paned and anr 2010 (2) Bom.C.R.(Cri) 725.

11. The hon"ble Supreme court has by judgment in the matter of Rangappa v. Sri Mohan has 2010 all SCR (Cri) 1349 dealt with section 139 of Negotiable Instruments Act. The presumption man dated in section 139 of the Act does indeed include the existence of legally enforceable debt or liability.

Negotiable Instruments Act was enacted with a specified object of making special provision by incorporating a strict liability so farceuse is concerned. The presumption of innocence is a human right, however section 139 raise a presumption in regard to the cheque was drawn in discharge of debt or other liability. There is nothing on record to show applicant has anywhere whispered to dispel the said presumption in tune to the requirement.

12. Considering this legal position as has-been enunciated by the Supreme court the factual matrix of the present case involve that the cheque issued by the Accused-Applicant was certainly as against legally enforceable liability of the work of installations carried out by the Complainant/Respondent No.1 at the hotel of the Accused-Applicant. Deficiencies if any, noticed later on, would not invoke to dis honour of cheque, in the absence of any contract.

13. Taking survey of these facts, I do not see any error in the judgment of conviction. Writ Petition lacks merit. Rule discharged.