(2007) 06 BOM CK 0094

In the Bombay High Court

Case No : Criminal Application No. 1300 of 2007

Sandipan Bhagwan Thorat	APPELLANT
Vs	
Ashok Dagdulal Lunawat and Another	RESPONDENT

Date of Decision : 22-06-2007

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 482, 91
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2008) CriLJ 154

Hon'ble Judges : J.H. Bhatia, J

Bench : Single Bench

Advocate : A.Y. Sakhare, instructed by YKS Legal, for the Appellant; Dilip Bodke and S.V. Gajre, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

J.H. Bhatia, J.—Heard Mr. Sakhare, learned Senior Counsel for the applicant, Mr. Bodke, learned Counsel for respondent No. 1. and Ms. Gajre, learned APP for the State.

2. The applicant is original accused, while respondent No. 1 is the complainant. The case of the respondent-complainant is that the accused had received amount of Rs. 20 Lakh from him and for repayment of the same he had issued a cheque in favour of the complainant, which was dishonoured and therefore, the complaint u/s 138 of Negotiable Instruments Act was filed. It appears that it is the case of the complainant that he had received a cheque of Rs. 20 Lakhs from Vithal Sikshan Prasarak Mandal and that cheque was credited in his own account with Madheshwari Urban Cooperative Bank Madha. On payment of Rs. 20 lakh to the accused by cheque against his own account with Madheshwari Urban Co-operative Bank, the amount was also credited in the account of the accused in the same bank. The accused had withdrawn that amount from his account. All these transactions took place between 24th April to 27 April, 2004. It is the contention of the accused that neither the complainant had received the amount

from Vithal Shikshan Prasarak Mandal nor amount was actually credited in his account nor it was transferred to the account of the accused nor it was withdrawn by him from the said account maintained by Madheshwari Urban Co-operative Bank. It is also contended that the said bank did not have funds during the relevant period to prove the payment of Rs. 20 lakh to the accused. It is contended that the complainant was Vice-President of the Madheshwari Urban Co-operative Bank and he had maintained the records of the Bank and had managed to make false entries.

3. The Manager of the said Bank was called as a witness on behalf of the complainant and during the cross-examination certain questions were put to him and he admitted that without going through the record, he could not make a statement about those questions. In view of this, the accused made an application before the trial Court seeking directions for production of several documents, which are shown at serial Nos. a to k from the bank. That application was rejected by the trial Court. Hence, the accused has preferred this application u/s 482 Cr.P.C.

4. After hearing the learned Counsel for both the sides, in view of the dispute involved and the fact that the Manager of the Bank had clearly stated that without going through the certain records of the bank, he could not answer the questions, I find that it was absolutely necessary to allow the production of the xerox certified copies of the documents shown at serial Nos. a, b and c in the said application. As far as other statements and documents are concerned they do not appear to be relevant for the purpose of cross-examination. Taking into consideration the heavy stake in the matter, it would be in the interest of justice to allow the production of the said documents for effective cross-examination of the witness.

5. For the aforesaid reasons, the application is allowed and the impugned order is partly set aside. The Madheshwari Urban Co-operative Bank. Madha shall produce the xerox certified copies of the documents shown at serial Nos. a, b and c in the application dated 20th January, 2007 filed by the accused/applicant u/s 91 Cr.P.C. before the trial Court.