

(2006) 11 BOM CK 0105

In the Bombay High Court

Case No : Criminal Application No. 3335 of 2005

Santosh Manikrao Gundale

APPELLANT

Vs

Rameshwar Wamanrao Tak and Another

RESPONDENT

Date of Decision : 06-11-2006

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 139

Citation : (2007) 4 BC 211 : (2007) 1 BomCR 905

Hon'ble Judges : M.G. Gaikwad, J

Bench : Single Bench

Advocate : M.B. Ubale, for Sonpethkar, for the Appellant; S.G. Chapalgaonkar, for the Respondent

Final Decision : Dismissed

Judgement

M.G. Gaikwad, J.—Heard Mr. Ubale, Advocate for appellant. According to Mr. Ubale, the order of acquittal is not justified as the accused himself has admitted issuance of cheque and in rebuttal of the presumption arising u/s 139 of Negotiable Instruments Act, the accused did not step into the witness box nor examined any other witness. So according to him, the judgment of acquittal suffers from infirmities, so leave needs to be granted to prefer appeal against acquittal.

2. On the other hand, Advocate Mr. Chapalgaonkar pointed out from the judgment itself that the defence of the accused that the blank cheques were issued in favour of complainant's father by way of security is probabalised by the statement of complainant himself. Complainant was a boy of 18 years and claimed to have advanced amount of Rs. 1,75,000/- for which he has not produced any document to show his source of earnings. In two other cases, the accused came to be acquitted. Accepting this defence put forth by accused with material on record, the defence being found probable the judgment of acquittal came to be recorded and there are no infirmities in the judgment, so it is not a fit case to grant leave.

3. As observed by learned Judge in paragraph No. 13 of the judgment, the complainant admitted that 3 cheques were issued by the accused towards repayment of loan of Rs. 1,75,000/-. For dishonour of all the 3 cheques 3 cases have been filed. However, one case is withdrawn and in second case accused is acquitted. This application pertains to third case in which also subsequently judgment of acquittal came to be recorded. In paragraph No. 18 of the judgment the learned Judge recorded reasons for accepting the defence of the accused as probable. The learned Judge observed that the complainant did not mention the date of advance of loan in his complaint. The date of issuance of the cheque has also not been mentioned. From the cross-examination and the statement of complainant in other cases, discrepancy was found in relation to advance of loan whether it was advanced on 14.1.2001 or 13.1.2001. The complainant claimed that he carries on independent business since 5-6 years. However, it has come on record that he had obtained licence for his business just 2 years before filing of this complaint. At the time of filing of complaint his age was 18 years. He started business 2 years before filing of complaint i.e. during his minority. He claimed that he had invested an amount of Rs. 7-8 lakhs in his business and his daily income is Rs. 2,000/-. However, he has not produced on record any documentary evidence such as statement of accounts etc. On the contrary, he admits that in the account books there is no entry of this transaction. The facts have come on record from statement of account produced at Exh. 62 that there was a transaction between accused and father of the complainant. Three cheques came to be issued by accused in favour of complainant's father and same were encashed. In paragraph No. 24 of the judgment also the admissions given by the complainant were mentioned that there was a talk between complainant's father and the accused to carry on business in partnership. Though he denied that actual business was started in partnership and the cheques were issued by way of security, the statement of account produced at Exh. 62 proved the transaction between complainant's father and the accused. The complainant had no source of separate income. In view of these facts, the learned Judge came to the conclusion that advance of loan as alleged by the complainant is not proved and the defence of the accused is found to be probable. As such no infirmities are found in the judgment. When the complainant himself failed to prove advance of loan, question of its repayment does not arise. The presumption arising u/s 139 of Negotiable Instruments Act has been rebutted by material on record. In these circumstances, judgment of acquittal cannot be said to be perverse and there is no necessity to grant leave to prefer appeal against judgment of acquittal.

4. In the result, criminal application is rejected. Leave to prefer appeal against the judgment of acquittal is refused.