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Court : Mumbai Aurangabad

Decided On : Nov-03-2014

Judge : T.V. Nalawade

Appeal No. : Criminal Application No. 5290 of 2012

Appellant : Ravindra

Respondent : Imran Sayed

Judgement :

1. The application is filed under section 378(4) of the Code of Criminal Procedure for seeking leave to file appeal against the judgment and order of Summary Criminal Case No.378/2012 which was pending in the Court of the Judicial Magistrate, First Class, Aurangabad. The learned Judicial Magistrate has acquitted the respondent of the offence punishable under section 138 of the Negotiable Instruments Act. Both the sides are heard. This Court has perused the relevant record.

2. The applicant, complainant, owns one house property and he has given the property to the respondent-accused under agreement of leave and licence. It is the case of the complainant that as against the licence fees, the cheque in question of Rs.38,000/- was given by the accused to him and this cheque bounced. The complainant followed the procedure laid down in the Negotiable Instruments Act and filed the complaint. Payment was stopped by the accused by giving

instructions to the bank.

3. Before the Judicial Magistrate, the complainant examined himself. The accused also examine himself to give evidence in rebuttal. Some record like copies of agreement in respect of leave and licence were produced before the learned Judicial Magistrate. The learned Judicial Magistrate has held that the complainant failed to prove that the cheque was issued as against the existing enforceable liability and so the accused is acquitted.

4. It is not disputed that there were written agreements. Under the first agreement the accused had agreed to pay monthly licence fee of Rs.4,500/-. Under the second agreement he agreed to pay Rs.5,000/- per month. In the legal notice given by the complainant he contended that there was agreement to pay licence fees of Rs.7,600/- per month. However, there is no written document in this regard with the complainant.

5. Attention of this Court is drawn to the provisions of Sections 24 and 55 of the Maharashtra Rent Control Act, 1999. This Court is avoiding to discuss those provisions as the matter under the said act filed by the landlord is still pending and that point needs to be decided by the Civil Court independently.

6. This Court has gone through the oral evidence of the complainant and also the evidence of the accused. Learned counsel for the complainant placed reliance on a case reported as (2001) 6 SCC 16 (Hiten P Dalal v. Bratindranath Banerjee). The Apex Court has laid down that for the use of the provisions of Sections 139 and 118 of the Negotiable Instruments Act, some basic foundation needs to be laid down by the complainant and after that the presumption available can be used as against the accused. It is laid down that presumption is rebuttable and if the defence taken by the accused is reasonable, probable that would be sufficient for rebuttal of the presumption. There cannot be dispute over this proposition.

7. The complainant has come with a specific case that the cheque in question was given towards payment of rent for the months of April, May, June, July and August 2011 and the licence fees was at the rate of Rs.7600/- per month. It appears that the parties have created the document to mention the licence fees and even when

the period of previous licence was not over, subsequent document was created for making enhancement of licence fees. The complainant tried to give explanation by saying that the accused got possession of more portion and so the licence fees came to be increased. Such contention is made in the grounds of the present proceeding also. But such was not the case of the complainant before the Judicial Magistrate and such liability was not mentioned in the statutory notice. It was necessary for the complainant to lay down the foundation to show that there was agreement to pay particular licence fees. There is no such evidence given and so it cannot be said that necessary foundation was laid. This Court has no hesitation to observe that in view of the nature of evidence, reasonable possibility is created by the accused of the non existence of existing enforceable liability in respect of the cheque. Nature of dispute between the parties needs to be kept in mind. This Court holds that there is other possibility and other view is possible. Interference in the judgment of the trial Court acquitting the accused is not possible.

8. In the result, the application stands rejected.

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