

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.4141 OF 2014

Tukaram Madhav Jorvar ..Applicant

Versus

Salim Gani Karim Patel
and anr. ..Respondents

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Mr.V.Y.Bhide, advocate for applicant

Mr.K.N.Shermale, advocate for respondent no.1

Mr.R.P.Phatake, APP for respondent no.2 - State

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CORAM : M.T. JOSHI, J.

DATE : JUNE 25, 2015

PER COURT :

Heard both sides.

2] Aggrieved by acquittal of respondent no.2 from the offence punishable under Section 138 of the Negotiable Instruments Act, present applicant/complainant wants to prefer an appeal and therefore, present application for grant of leave to file appeal, is filed.

3] In short, the case of the applicant is that he has given a hand loan of Rs.2,75,000/- to present respondent in the month of October, 2008 without any interest. He made demand to respondent no.2 for repayment of the same in the month of January, 2009. After persuasion, present respondent handed over him a cheque dated 6th April, 2009 and told that in case, the respondent would not repay the amount within one month, the cheque may be presented to the concerned bank. As the amount was not paid, the cheque was presented before the concerned bank, which was, however, returned for want of sufficient funds. Therefore, a notice was sent to the respondent, however, as the payment was not received, complaint came to be filed within the statutory period.

4] The defence of the respondent was that there were certain B.C. transaction between the parties and due to the dispute of the B.C. transaction,

the applicant has managed to forcibly take the cheque from the custody of the son of the accused and thereafter, the same was misused.

5] Learned Judicial Magistrate F.C. took into consideration the evidence led by the present applicant. The record would show that when the present applicant pointed that the cheque may be referred to an expert to find out, as to whether, the cheque bears signature of the respondent as against the case that a blank cheque was received, present respondent refused to give his specimen signature. Learned Judicial Magistrate F.C., therefore, drawn adverse inference against present respondent. However, on merit of the case, learned Judicial Magistrate F.C. found that it would not be probable that the applicant would give a hand loan of substantial amount of Rs.2,75,000/- to the respondent without interest, as the applicant admitted that he and his family members were

facing recovery proceeding regarding loans obtained by them. Besides this, though the applicant has stated that he has given said amount to the respondent after drawing money from the saving bank account of his brother, the figures in the extract of bank account, does not match.

6] Upon hearing both sides, a decision on merit is required on the point as to, what would be the effect of adverse inference, if any, for refusal to give specimen signature by the respondent and probability of the case to rebut the presumption that has statutorily arisen in view of proof of existence of the cheque and its dishonour by the bank etc.

7] In that view of the matter, without making further comment on merit of the case, in my view, since an arguable case is made out, leave to file appeal needs to be granted.

8] Present application for grant of leave to file appeal is, therefore, allowed. Leave granted.

9] Office to register the appeal. Mr.Shermale, learned counsel, waives notice upon registration of the appeal.

[M.T. JOSHI, J.]

kbp