

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 518 OF 2014

Ashok Indarlal Bharuka,
Age: 55 years, Occu. Agri. & Business,
Prop. Ashok Electricals,
R/o Nehru Road, Jalna.

...Applicant

versus

Nitin S/o Rushiram Agrawal (Garg)
Age: Major, Occup. Business,
Prop. M/s Vandana Seeks & Fertilizers,
R/o Near Jindal Banglow, Manish Nagar,
(Sambhajinagar), Jalna, Dist. Jalna.

...Respondent

.....
Mr. L.B. Pallod, Advocate for applicant
Mr. S.G. Ladda, Advocate for respondent
.....

CORAM : A.I.S. CHEEMA, J.

DATED : 12th JANUARY, 2015

Order :-

1. Heard Mr. Pallod, learned counsel for the applicant and Mr. Ladda, learned counsel for the respondent, finally. Perused the record.

2. Learned counsel for applicant-original complainant submits that the trial court has wrongly acquitted the accused in the complaint under section 138 of the

Negotiable Instruments Act. He submits that findings recorded by the trial court regarding non service of notice are erroneous. It is also argued that the trial court wrongly held that applicant-original complainant was doing money lending business. According to learned counsel, if definition of 'loan' as found in section 2(9)(f) of the Bombay Money Lenders Act, 1946 is perused, then present transaction could not be said to be money lending. According to learned counsel, the amount was advanced by the applicant- original complainant through cheque and the whole transaction was done by cheques, so it could not be said to be money lending.

3. Learned counsel appearing for applicant- original complainant relied on the judgment in the case of **Nandram Kaniram & others Vs. N.B. Rahatekar** reported in **1994 Mh.L.J. 380**, referred to by the learned trial court in paragraph No. 15 of the judgment. Learned counsel submits that considering said citation as well as judgment in the case of **Sitaram Laxminarayan Rathi Vs. Sitaram Kashiram Koll and others** reported in **[1985 Mah LR 117]**, the transaction could not have been held to be money

lending. The learned counsel submits that leave to file appeal against judgment of acquittal dated 21-11-2013 passed by the learned Judicial Magistrate F.C. Jalna, in S.T.C.275 of 2011 needs to be granted.

4. Learned counsel for respondent-original accused referred to paragraph No. 17 of the judgment, wherein the trial court discussed the evidence of complainant that accused had paid him interest as a result of profits in his business. The trial court also discussed the admission of the complainant that he had advanced loan to other persons also and had received the amounts of interest. The learned counsel further referred to judgment in the case of **Sureshchandra Nandlal Vs. Lala Gopikrishna Gokuldas Agencies**, reported in **1996(4) All MR 325** and submits that where if interest were charged it would amount to money lending. On the basis of this, learned counsel argued that the trial court has rightly discussed all the facts of the matter as well as case laws cited by both sides and come to the right conclusion that there was money lending transaction without there being any license.

5. Learned counsel appearing for respondent submits that notice was sent on the correct address and so presumption of service could not be raised.

6. Perusal of the evidence available as well as the Judgment and reasonings recorded by the trial Court, the view taken by the trial Court is possible view of the evidence available and once acquittal is recorded, it will not be appropriate to interfere.

7. There is no substance in the Application. The Criminal Application stands rejected.

(A.I.S. CHEEMA, J.)

MTK