

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.434 OF 2015
IN
CRIMINAL APPLICATION NO.433 OF 2015

Dilip s/o. Krushna Mali .. Applicant

Vs.

Kailas s/o. Maharu Rathod .. Respondent

Mr.S.K.Naikwade, Advocate for applicant

CORAM : M.T. JOSHI, J.

DATE : JULY 03, 2015

ORAL ORDER :

Heard Mr.Naikwade, learned counsel for the applicant.

2] Aggrieved by recording acquittal of present respondent/accused from the offence punishable under Section 138 of the Negotiable Instruments Act, the applicant wants to file an appeal and therefore, present application is filed for grant of leave to file the appeal. Since there is delay in filing the present application, Criminal Application No.434 of 2015 is filed for condonation of the same.

3] Submissions made by Mr.Naikwade, learned counsel for the applicant and the record would show that the applicant/complainant was resident of village Akalad, Dist. Dhule. He was an agriculturist. Respondent - Kailas was working as a clerk in one medical college at Dhule and was resident of Nashik. According to the applicant/complainant, he had advanced hand loan of RS.2,00,000/- to the respondent/accused and to repay the same, the cheque in question, was issued by the respondent. The same was, however, not honoured by the bank as there was no sufficient funds in the account of the respondent. Thereafter, notice was sent by the applicant to the respondent. Despite service of notice, no amount was reimbursed by the respondent to the applicant and hence, within the statutory period, the complaint was filed.

4] The defence of the respondent was that in fact, he was the Mediator between applicant/complainant and one office bearer of an education institute, to seek a job for the son of the applicant/complainant in the said education. For that purpose, the applicant/complainant had paid an amount of Rs.1,75,000/- to the said office bearer. Appointment in the said institute was, however,

not given to the son of the applicant and even the amount was also not returned back. Therefore, under pressure, the applicant obtained the cheque in question from the respondent.

5] Learned Judicial Magistrate F.C. has taken into consideration the admission of the applicant/complainant that though he has maintained the account, no entry was made regarding present transaction in his account. Further, it was admitted by the applicant/complainant that as he was in dire financial need, he sold his property and out balance amount of Rs.Five Lakhs, he had paid Rs.2,00,000/- to present respondent as a hand loan. Admittedly, however, no contemporaneous document was executed. In that view of the matter, learned Judicial Magistrate F.C. observed that the presumption that has arisen in passing of the cheque, is rebutted.

6] Considering the occupation of the parties, their places of residence, the substantive amount allegedly advanced without any document and the facts on record, in my view, a reasonable and possible view has been taken by learned Judge.

7] In the circumstances, delay condonation and grant of leave to file appeal would be an exercise in futility. Criminal Application No.433 of 2015 is hereby rejected. Leave refused. Consequently, Criminal Application No. 434 of 2015 seeking condonation of delay stands dismissed.

[M.T. JOSHI]
JUDGE

kbp