

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

Criminal Application No. 435 of 2015

Mohammad Qayyum S/o Mohammad
Hasham.

.. Applicant.

Versus

Abhijit S/o Diliprao Deshmukh
And Another.

.. Respondents.

Shri. H.I. Pathan, Advocate, for applicant.

Shri. S.N. Muley, Additional Public Prosecutor, for
respondent No.2.

CORAM: T.V. NALAWADE, J.

DATE : 17th AUGUST 2015

ORDER:

1) The application is filed to grant leave under section 378(4) of the Code of Criminal Procedure, 1973 to file appeal against the judgment and order of S.C.C. No.8/2011. Heard learned counsel for the applicant.

2) The applicant had filed private complaint under section 138 of Negotiable Instruments Act against the

respondent. He has contended that he had given hand loan of Rs. Two lakh and for repayment of the hand loan, cheque in question was given by the accused. This cheque bounced and after following procedure the complaint was filed. Accused pleaded not guilty and he contended that this cheque was given to his servant of the liquor shop and it is misused. The accused did not examine anybody in defence.

3) Learned Judicial Magistrate has observed that the complainant ought to have produced the account statement of his bank well in advance to show that he had funds. Such statement was produced though subsequently but it is not considered. Learned Magistrate has observed that the complainant could not give particulars of the family members of the accused when he could give the other particulars like number of issues. The Judicial Magistrate has mentioned one more circumstance that many complaints are filed against the accused though by others of similar nature.

4) Virtually nothing was given by the accused to rebut the presumptions which are available to him under sections 118 and 139 of the Negotiable Instruments Act. First he had applied for sending the cheque to handwriting expert to ascertain difference in writing appearing on the cheque and the signature about the ink used but when the Court made order, he avoided to send the document to the expert.

5) In view of these circumstances this Court holds that there is good arguable case to the applicant in the appeal.

6) In the result, the application is allowed. Leave is granted.

7) The appeal is admitted. Notice after admission made returnable on 5 October 2015. Call record and proceeding.

Sd/-
(T.V. NALAWADE, J.)

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