

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1863 OF 2014

Mahendra Yashwant Patil

Age : Adult, Occu.: Service,

R/o : Shital Society, Navapur,

Taluka : Navapur, Dist. : Nandurbar

.. Applicant

(Orig. Complainant)

Vs.

Vasantgiri Shankargiri Gosavi

Age : Adult, Occu.: Service,

R/o : Avdhutwadi, Shital Society,

Navapur, Taluka : Navapur,

Dist. : Nandurbar

.. Respondent

(Accused)

Ms. Pallavi Dabholkar, Advocate i/b Mr. Mandar M. Dabholkar,
Advocate for the applicant

Mr. R.S. Wani, Advocate for the respondent

CORAM : M.T. JOSHI, J.

DATE : 12/06/2015

ORAL ORDER :

Heard both sides.

2. Aggrieved by the acquittal of the respondent from the offence punishable under section 138 of the Negotiable Instruments Act, the present application for leave to file appeal is preferred by the original complainant.

3. According to the applicant, he had given a hand-loan of Rs.3,00,000/- to the respondent, who is serving in the very school where the applicant serves. For the repayment of the said amount, the impugned cheque was issued by the respondent. Since the said cheque was dishonoured by the banker, statutory notice within the prescribed period was issued and as the respondent had given a false reply and did not comply with the said notice, complaint came to be filed within limitation.

4. The applicant proved the cheque, the banker's memo and the Office copy of the notice alongwith the acknowledgment. According to the respondent, in-fact, five blank cheques were given to one Utkarsh Vyas towards different transaction between him and said Utkarsh Vyas. Utkarsh Vyas has, however, handed over one cheque to the present applicant and the cheque is thus misused.

5. The learned Judicial Magistrate First Class acquitted the present respondent, as according to him, star witness that is in whose presence the transaction

took place, was not examined. Further, the improbability was found that as the present complainant is a Peon, he could not have an amount of Rs.3,00,000/-. Lastly, the learned Judicial Magistrate First Class relied on the photocopy of the pro-note regarding the transaction of the respondent with Utkarsh Vyas, produced by the respondent to which the present applicant is an attesting witness.

6. During hearing, it was pointed out that reference in the the pro-note of two cheques are different, than the cheque issued in the present case, as their numbers are totally different. The learned Judicial Magistrate First Class has taken into consideration the alleged misuse of the cheque as one of the ground as detailed supra to come to the conclusion that there was rebuttal of the presumption available under the Negotiable Instruments Act. Since material mistake is committed by the learned Judicial Magistrate First Class in this regard, an arguable case is made out. In the circumstances, the following order:-

7. Criminal Application No. 1863 of 2014 is hereby allowed. Leave to file appeal is granted.

8. Appeal be registered as per due procedure of law. Upon registration of the appeal, the same stands admitted.

9. Mr. R.S. Wani waives service of notice for the respondent upon admission of the appeal.

10. Action under section 390 of the Code of Criminal Procedure be taken.

11. Respondent – Vasantgiri Shankargiri Gosavi be released on bail, upon his execution of P.R. bond in the amount of Rs.10,000/- (Rs. Ten Thousand) and also upon furnishing surety in the like amount before the concerned Judicial Magistrate First Class within a period of six (6) weeks from the date of this order.

12. Hamdast granted.

13. Liberty to move for expedited hearing of the appeal is hereby granted.

14. Criminal Application accordingly stands disposed of.

[M.T. JOSHI]
JUDGE

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