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

912 CRIMINAL APPLICATION NO.2524 OF 2015

BAPU TUKARAM PADOLKAR
VERSUS
KAILAS DNYANDEV INGLE & ANR
...
Advocate for Applicant : Mrs. RS Kulkarni, Adv. h/for Mr.Kulkarni Sanket S.
Respondent No. 1 served.
Mr. KS Patil, APP for Respondent/State;

...

CORAM : P.R.BORA, J.
DATE : 2nd DECEMBER,2015.

PER COURT :

1) Heard. Vide the present application, the applicant is seeking leave to appeal against the order of acquittal passed in Criminal STCC No.3647/2009 on 31st March, 2015 by Judicial Magistrate, First Class, Court No.3, at Ahmednagar.

2) None appears for Respondent No.1 though duly served.

3) The learned Counsel appearing for the applicant submitted that the learned Magistrate has acquitted the accused for wrong reasons and without properly appreciating the evidence brought on record by the complainant, i.e. present applicant. Learned Counsel invited my attention to para 26 of the

impugned judgment, wherein the learned Magistrate has summarized the reasons for recording the acquittal of the accused. Said para 26 of the impugned judgment is reproduced herein below, -

> "26. As a conclusion of all the above discussion, admittedly, the amount advanced by the complainant to the accused by way of hand loan, was an unaccounted cash. Further though for a sake of moment, it is presumed that the complainant has advanced the alleged amount to the accused, that was a time barred claim, therefore, how its recovery can be concluded as a legally enforceable debt?"

4) Learned Counsel for the applicant, referring to the observations made in the aforesaid paragraph, brought to my notice the evidence which has come on record during the course of the trial. It has come on record that the amount of Rs.50,000/- was given by the complainant to the accused by way of a cheque drawn on his bank account in Allahabad bank, branch at Ahmednagar. The evidence on record also show that the complainant has placed on record his pass book of concerned saving bank account, evidencing that the aforesaid amount of Rs.50,000/- was transferred to

the account of the accused from his account. Looking to the evidence, as aforesaid, it prima facie appears that the reasons and conclusions recorded by the trial court, need to be re-considered.

5) Referring to and relying upon the judgment of the Division bench of this Court in the case of *Dinesh B.Choksi and Anr. Vs. Rahul Vasudeo Bhatt and Anr. - 2012 (4) Bom.C.R.(Cri.) 764.* the learned Counsel submitted that the another conclusion recorded by the learned Magistrate that the cheque in question was towards the time-barred claim and hence cannot be said to be issued towards the legally enforceable debt, also cannot sustain. The Division bench of this court in the case cited supra has held that the promise in the form of a cheque drawn in discharge of a time-barred debt or liability, becomes enforceable by virtue of sub-section (3) of Section 25 of the Contract Act. The Division Bench has further held that such a cheque becomes a cheque drawn in discharge of a legally enforceable debt, as contemplated by the Explanation to Section 138 of the Negotiable Instruments Act, 1881.

6) Having regard to the ratio laid down in the judgment relied upon by the applicant, it appears to

me that the applicant has certainly made out a arguable case. In the circumstances, I am inclined to allow the application. Hence, following order.

ORDER

1) The Criminal Application is allowed;

2) Leave to appeal as prayed for is granted;

3) The Criminal Application so filed be treated as memo of appeal;

4) The appeal be registered in accordance with law;

5) The appeal is admitted;

6) Action under Section 390 Cr.P.C. be initiated against Respondent No.1 and compliance report thereof be submitted within a period of six weeks.

(P.R.BORA)
JUDGE

bdv/