

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

CRIMINAL APPLICATION NO.3538 OF 2014

M/s Shivkrupa Transport Agency ... APPLICANT

VERSUS

Shri Kathe Sagar Radhakrushna ... RESPONDENT

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Shri S.T. Shelke, Advocate for applicant
Shri M.A. Jahagirdar Shaikh, Advocate for respondent
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CORAM: A.I.S. CHEEMA, J.

DATED: 27th February, 2015.

ORAL ORDER :

1. Heard learned counsel for applicant – original complainant and learned counsel for respondent – original accused. Learned counsel for the applicant is submitting that the respondent was known to the applicant and because of relations, as the respondent was in need of money for construction of house, the applicant had given hand loan of Rs.1,50,000/- to the respondent. The respondent later avoided to return the money and when insisted, issued cheque. The cheque, however, bounced and because of which, complaint was required to be

filed. Counsel submits that, the complainant brought on record evidence of himself and proved the necessary documents. The respondent did not deny his signature on the cheque, but claimed that the cheque was stolen. The counsel submitted that the applicant proved that on 19.5.2006, he had withdrawn Rs.1,55,000/- from his Account and according to the counsel, the amount was advanced to the respondent to help the respondent. Thus, according to the counsel, the trial Court wrongly acquitted the accused.

2. Against this, counsel for respondent submitted that the trial Court has considered the evidence of both sides. Trial Court considered that accused had taken defence that the applicant was his driver, who managed to steal the cheque. Regarding the said defence, the respondent brought on record material to show that he had made complaints to the police and even filed private complaint against the applicant, for which process has been issued. The counsel submitted that, if the recital of the complaint is perused, it claims that the amount was advanced "from time to time" whereas at the time of evidence, complainant tried to show that he had withdrawn Rs.1,55,000/- from his Account on 19.5.2006 and from that he advanced Rs.1,50,000/- to the respondent. It has been argued that, the trial Court has rightly appreciated the evidence and not believed

the complainant and thus, no interference is called for.

3. Going through the material available, the trial Court appears to have discussed the evidence to find that the parties did not appear to have close relationship. Thus, the trial Court observed that prudent person, in such circumstance, would get made a hand loan receipt if such big amount was advanced. Trial Court discussed that the cheque was dishonoured earlier on two occasions and thus, found substance in the defence that when the respondent came to know about the cheque, he filed complaint to the police and instructed Bank to stop the payment and also filed private complaint. The trial Court considered the evidence where the complainant initially denied that he was driver of the accused, but when confronted with a fine receipt, had to accept that he was indeed driver of the respondent – accused. The trial Court observed that the applicant – complainant malafidely denied that the vehicle was entrusted to him. Thus, the trial Court observed that the evidence of complainant did not appear to be convincing. It also discussed the evidence of D.W.1 Kusum, the mother of respondent which was brought to prove that the house was constructed in 2007 and retiral benefits of her husband were used. The trial Court thus observed that the accused was in strong financial condition and there was no necessity to take hand loan. It was further

discussed that, in the cheque Exhibit 31 there was difference in the ink of the signature and rest of the contents. The trial Court thus, from the evidence, observed that there was probability that the blank cheque was misused.

4. For such reasons, the trial Court, after examining the evidence, took view that the offence was not established. Nothing is shown that from the evidence the view taken was not possible to take. As there is judgment of acquittal, there is no reason to interfere. There is no substance in the application. Criminal Application is rejected.

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

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