

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

924 CRIMINAL APPLICATION NO. 3171 OF 2015

Salim Babulal Tamboli. ... Applicant / Appellant
(Orig. Complainant)

VERSUS

Khalil Ahmed Gulam Bepari. ... Respondent
(Orig. Accused)

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Mr. Amol K.Gawali, Advocate for Applicant / State;
Mr. D.G.Nagode, Advocate for Respondent.

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CORAM : P.R. BORA, J.
Dated: December 02, 2015

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PER COURT :-

1) The applicant has filed present application invoking the provisions under section 378(4) of the Code of Criminal Procedure, to file an appeal against judgment and order dated 29.4.2015 passed by the learned Judicial Magistrate, First Class, Court No.5, Ahmednagar, in Summary Criminal Case No.459/2013, whereby the learned Magistrate has dismissed the complaint and acquitted the accused therein i.e. the respondent in the present case.

2) Mr. Gawali, learned Counsel appearing for the applicant invited my attention to para 17 of the impugned

judgment, which is reproduced herein below;

17. Considering above discussion I am of the opinion that alleged that hand loan amount of Rs.5,10,000/- exceed of Rs.20,000/- and which paid in cash and not account payee cheque. Therefore, there is infringement of section 269(SS) of the Income Tax Act. Complainant had not taken any written notice or any agreement in respect of giving hand loan amount to the accused. He is unable to depose the exact date of giving hand loan. Considering these aspects initially transaction between complainant and accused creates doubt that really the amount was disbursed to accused. Therefore, complainant failed to prove the initial burden that he had given the hand loan amount to accused. Thus, I answer point no.1 in the negative.

3) The learned Counsel relying on the judgment of the learned Single Judge of this Court in the matter of **Mr.Krishna P.Morajkar Vs.Mr.Joe Ferrao & Anr. 2013 All MR (Cri) 4129** submitted that, in view of ratio laid down in the said judgment, the observations recorded by the learned Magistrate in para No.17 can not sustain.

4) The learned Counsel appearing for the respondent i.e. original accused has strongly opposed for allowing the present application. The learned Counsel submitted that, even on other counts, the learned Magistrate has recorded an unambiguous finding that, the complainant has failed in toto in establishing his case.

5) I have considered the submissions advanced by the learned Counsel for the respective parties. On perusal of the judgment in the case of **Mr.Krishna P.Morajkar Vs.Mr.Joe Ferrao & Anr. 2013 All MR (Cri) 4129**, relied upon by the learned Counsel appearing for the applicant, it appears that the applicant has made out an arguable case. The reasonings recorded by the trial Court need to be re-considered. I am therefore, inclined to allow the present application. Hence, the following order:

ORDER

- A) The application is allowed. Leave granted.
- B) The application be treated as appeal.
- C) Appeal is admitted. Call for R & P.
- D) Action under Section 390 of Cr.P.C. be initiated against the respondent / accused.

(**P.R. BORA, J.**)

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S.P.Rane