

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

CRIMINAL APPLICATION NO. 3719 OF 2014

Shakur Umar Bagwan

..APPLICANT

VERSUS

Shaikh Altaf Mohd. Alli

..RESPONDENT

....

Mr. N.C. Garud, Advocate for applicant.

Mr. L.B. Palod, Advocate for respondent.

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CORAM : M.T. JOSHI, J.

DATED : 9th DECEMBER, 2015

ORAL ORDER :

Heard both sides.

2. Aggrieved by acquittal of respondent from the offence punishable under Section 138 of the Negotiable Instrument Act, applicant wants to prefer an appeal for leave to file appeal and therefore the present application is hereby filed.

3. The applicant/original complainant's case before the learned Trial Court is that present respondent has obtained an

amount of Rs.1,00,000/- as a hand loan for purchase of two motorcycles. He promised to repay the same and has passed the cheque in question dated 29th October, 2012. However, the said cheque was returned by the bank for want of sufficient funds. Thereafter, notice by registered post was sent which was however returned by the postal authority with an endorsement that the respondent did not reside on the said address. Thereafter complaint came to be filed.

4. The defence of the respondent however was that he had business transactions with brother of the present applicant/complainant. Even certain sale deeds were executed and only as security, 12 blank cheques containing signature of the applicant/complainant were handed over to the brother of the complainant. By misusing those cheques, similar 4 to 5 same complaints were also filed.

5. Before the learned J.M.F.C., Ahmednagar, the respondent filed certified copies of two sale deeds showing those transactions.

The complainant has avoided to answer the leading questions in cross examination that there were business and chit fund transactions between the respondent and the applicant/complainant's brother. He also showed ignorance to the fact of sale of properties between his brother and the respondent. When lastly the leading question was put, that one of the cheque is misused in the present proceeding, he also answered the same that he did not know about it.

6. Besides this, the respondent has filed true copies of the complaints already lodged against the respondent besides the present proceeding. One of the complaint was filed by brother of the applicant/complainant and in all an amount of Rs.7,70,000/- was involved and the period was only of four weeks. In that view of the matter, learned J.M.F.C. held that the presumption that has arisen due to passing of the cheque, has been rebutted.

7. In view of the above material as appreciated by the learned J.M.F.C., reasonable and probable view has been taken.

Therefore, if leave to file appeal is granted, ultimately no result would be forthcoming in favour of the applicant/complainant as there would be no interference in the order of the learned J.M.F.C. Hence the following order.

8. Application for leave to file appeal is hereby dismissed.

(M.T. JOSHI, J.)