

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

**CRIMINAL APPLICATION NO.4877 OF 2013**

Rajendra Shankarrao Borude,  
Age 39 years, Occ. Business,  
R/o. Wamanbhau Nagar,  
Tq. Pathardi, Dist. Ahmednagar ..Applicant

Versus

Anand s/o. Ramchandra Chordiya,  
Age 48 years, Occu. Business,  
R/o. 1157, Bhandar Galli,  
Anandrushiji Marg, Tq. Pathardi,  
Dist. Ahmednagar ..Respondent

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Mr.K.D.Bade-Patil, advocate for applicant

Mr.N.K.Kadade, advocate i/b. Mr.A.N.Kakade,  
advocate for respondent - sole

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**CORAM : M.T. JOSHI, J.**  
**DATE : OCTOBER 15, 2015**

**PER COURT :**

Heard both sides.

2] Aggrieved by the acquittal of present  
respondent/accused from the offence punishable  
under Section 138 of the Negotiable Instruments  
Act in S.C.C. No.36 of 2010 by learned Judicial

Magistrate F.C., Pathardi, Dist. Ahmednagar, present applicant/original complainant wants to prefer an appeal and therefore, the present application for grant of leave to file appeal, is filed.

3] The applicant's case, in short, is that due to intimacy, he had given a hand loan of Rs.4,51,000/- to present respondent against which, he issued the cheque in question. However, when the cheque was presented to the bank, the same was returned as its payment was stopped. Therefore, after giving notice within limitation the complaint came to be filed.

4] The defence of the present respondent was that in fact, he had a transaction with the father-in-law of present applicant/complainant namely, Vitthal Pawar. Said Vitthal Pawar had purchased a plot from the respondent, however, there was an

electric pole and wire in the said plot, which divided the plot. Therefore, said Vitthal Pawar was facing problems to get permission for construction over the said plot. He, therefore, asked the present respondent to find another purchaser for the said plot. The transaction was to be completed within six months and against the said transaction, as a security, the cheque in question, only with signature of the respondent (i.e. a blank cheque) was passed to said Vitthal Pawar. However, the cheque has been misused by his son-in-law i.e. present applicant/complainant.

5] Before learned Judicial Magistrate F.C., it was satisfactorily proved that the applicant/complainant has put his own name in the said blank cheque. Further, the fact of sale of the plot by the respondent to the father-in-law of the applicant and the problem faced by him as there was an electric pole and wire in the plot, was

also accepted by him. Further no contemporaneous documents regarding the alleged transaction, as pleaded by the applicant, was there and in all these circumstances, learned Judicial Magistrate F.C. observed that the presumption regarding issuance of the cheque for repayment of the hand-loan has been sufficiently rebutted.

6] Upon going through the reasons forwarded by learned Judicial Magistrate F.C. and upon hearing both sides, in my view, a reasonable and probable view has been taken by learned Judicial Magistrate F.C. on the basis of the material before him. In the circumstances, grant of leave to file appeal would be an unnecessary exercise.

7] In the result, leave to file the appeal is hereby refused. The application is rejected.

**[M.T. JOSHI, J.]**

kbp