

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 5543 OF 2014

Mr. Bhonaji Haribhau Gande,
Age : 65 years, Occu.: Agri.,
R/o : Chorpuri, Tq. Georai,
District : Beed

.. Applicant
(Orig. Complainant)

Vs.

Mr. Baban Bapurao Gande,
Age : 52 years, Occu.: Agri.,
R/o : Chorpuri, Tq. Georai,
District : Beed

.. Respondent
(Orig. Accused)

Mr. N.K. Chaudhari, Advocate for the applicant
Mr. P.S. Pawar, Advocate for the respondent

CORAM : M.T. JOSHI, J.

DATE : 20/10/2015

ORAL ORDER :

1. Heard both sides.
2. Aggrieved by the acquittal of the respondent from the offence punishable under section 138 of the Negotiable Instruments Act, the present applicant/original complainant wants to prefer an appeal and, therefore, present application for leave to file appeal is preferred.

3. In nutshell, the case of the applicant is that the present respondent/accused, being the Chairman of a certain public school, had assured the applicant/complainant that he would give employment to the son of the applicant, as a Peon in the school and, therefore, for consideration of the same, the respondent received an amount of Rs.2,00,000/-. The respondent however did not fulfill his assurance.

. Thereafter, after much persuasion the respondent issued the cheque in question towards repayment of the said amount on 02/09/2011. The said cheque however was dishonoured as the fund was insufficient. Thereafter, upon issuing the statutory notice, the complaint came to be filed within statutory period.

4. The respondent denied all the allegations. According to him, earlier the applicant/complainant and the respondent were the room-mates while being the employees of certain sugar factory and behind his back, the applicant had stolen the signed blank cheque and the same is now being misused.

5. The learned Judicial Magistrate First Class inter-alia found that no witness is examined regarding any of those two transactions, which according to the deposition of complainant in the witness box did not take place in his presence. Further, the case of the respondent that the complainant and the respondent were residing in one room while they were working in one sugar factory has been admitted. Additionally, the learned Judicial Magistrate First Class held that the consideration was against the public policy and for all these reasons, the respondent came to be acquitted.

6. Upon hearing both sides, it would be clear that the learned Judicial Magistrate First Class has taken into consideration all the evidence on record. A reasonable and probable view has been taken by the learned Judicial Magistrate First Class. No witness was examined on the actual transactions, as alleged because the complainant/applicant in the cross-examination has deposed that none of the transactions have taken place in his presence.

7. In that view of the matter, no perversity in the reasoning is found. In the circumstances, grant of leave to file appeal would be an exercise in futility. The Application is therefore dismissed. Leave Refused.

[M.T. JOSHI]
JUDGE

arp/