

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 5596 OF 2014

Nagendra S/o Laxmanrao Suryawanshi
Age : 62 years, Occu.: Retired
R/o CTS No. 17204 Osmanpura,
Aurangabad

.. Applicant
(Orig. Complainant)

Vs.

1] Nanda Mukundrao Kamble
Age : 50 years, Occu.: Business,
R/o D-75, Prarthana Sara Sidhi
In front of Hotel Aaditya,
Aurangabad

2] State of Maharashtra .. Respondents

Mr. Kachru A. Ingle, Advocate for the applicant
Mr. N.T. Tribhuwan, Advocate for respondent no.1
Mr. P.N. Kutti, A.P.P. for the respondent-State

CORAM : M.T. JOSHI, J.
DATE : 10/12/2015

ORAL ORDER :

Heard both sides.

2. Aggrieved by the acquittal of the respondent no.1 from the offence punishable under section 138 of the Negotiable Instruments Act, the present applicant wants to prefer an appeal and, therefore, the present application for leave to file appeal is filed.

3. According to the applicant-complainant, he has facilitated the respondent no.1 by giving hand-loan of Rs.3,00,000/- to her and towards the repayment, the cheque in question was issued by the respondent on 05/11/2012. However, when the cheque was placed for encashment, the same was dis-honoured for want of funds and, thereafter, by issuing notice and upon receipt of a false reply, complaint came to be filed.

4. The defence was that in-fact an amount of Rs.60,000/- was obtained by the respondent no.1 on interest. At the time of giving the loan, the complainant-applicant has obtained the cheque only with signature and bond only of the respondent no.1 and the same is now being misused despite repayment of the amount. Similar was her reply to the notice at Exhibit-51.

5. The present applicant during cross-examination has admitted that he was not closely acquainted with the respondent no.1. He had no occasion to visit her house

at any time. He had acquaintance with the respondent through one Mr. Jadhav, however, he did not even contacted, consulted or even informed said Jadhav at the time of passing such a huge amount. Further, he avoided to state regarding source of Rs.3,00,000/- by saying that about 7-8 months of the present transaction, he had withdrawn the amount through A.T.M.

. The learned Judicial Magistrate First Class, Aurangabad has further found that the body of the cheque is filled-in by the applicant-complainant himself. In the circumstances, it was held that the presumption that has arisen due to the passing of the cheque has been rebutted.

6. Upon hearing both sides and upon going through the conclusion reached at by the learned Judicial Magistrate First Class and in the circumstances, as admitted by the applicant, as detailed supra, there could not have been any hand-loan of Rs.3,00,000/-.

7. The findings are based on the material on record. In the circumstances, grant of leave to file

appeal would be an exercise in futility. The Application is therefore dismissed. Leave to file appeal is hereby refused.

[M.T. JOSHI]
JUDGE

arp/