

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.5642 OF 2014

Shri Suresh Madanlal Agarwal,
Age-65 years, Occu:Business,
R/o-House No.3071/72, Old Agra Road,
Near City Police Station, Dhule,
Tq. & Dist-Dhule

...APPLICANT
(Orig. Complainant)

VERSUS

Ramakant Vasantlal Agarwal,
Age-58 years, Occu:Business,
R/o-House No.3073, Old Agra Road,
Near City Police Station, Dhule,
Tq. & Dist-Dhule

...RESPONDENT
(Orig. Accused)

...
Mr.P.S. Paranjape Advocate for Applicant.
Mr.A.S. Sawant Advocate for Respondent.
...

CORAM: A.I.S. CHEEMA, J.

DATE : 26TH NOVEMBER, 2015

ORDER :

. Heard learned counsel for the Applicant-

original complainant. It is stated that wife of the Respondent-accused had bank loan outstanding and to help her to repay the loan, the complainant advanced money to the Respondent-accused regarding which, earlier two cheques were issued, which bounced and later on the accused executed deed Exhibit 44 and signed thirteen cheques out of which four were presented. When those cheques bounced the prosecution was brought about.

2. According to the counsel for Applicant, the trial Court has misinterpreted the documents to hold that the transaction was between the wife of the accused and the mother of the complainant. The complainant had taken money from the account of his mother to help the accused and thus according to the counsel, the evidence needs to be re-appreciated.

3. Against this, the learned counsel for Respondent-accused submitted that the trial Court

has correctly appreciated the material which was available on record. According to the counsel for Respondent the transaction was between the wife of the accused and the mother of the complainant and those ladies have not been examined and that was a different transaction and it has nothing to do with the alleged loan which complainant claims to have taken by the accused. According to the learned counsel, the document Exhibit 44 does not prove that the liability was accepted by the Respondent-accused.

4. Going through the material available on record, it appears that the evidence needs to be re-appreciated regarding the liability in the light of document Exhibit 44 and the cheques which were undoubtedly issued by the Respondent-accused. If there was absolutely no liability, there could not have been any reason to execute the document. Hence the evidence needs to be re-appreciated.

5. For the above reasons, Application is allowed. Leave is granted. Application be converted into Appeal.

6. Appeal is **Admitted**. Mr. Sawant, learned counsel waives service of notice for Respondent after admission of the Appeal.

7. Paper Book be got prepared.

8. Action under Section 390 of the Code of Criminal Procedure be taken against the Respondent-accused in the trial Court.

[A.I.S. CHEEMA, J.]