

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.5674 OF 2014

Annis Gafur Shaikh,
Age-46 years, Occu:Agriculture,
R/o-Kumbhari, Tq-Tuljapur,
Dist-Osmanabad

...APPLICANT

VERSUS

1) Jainubee Gafur Shaikh,
Age-70 years, Occu:Agriculture,
R/o-Kumbhari, Tq-Tuljapur,
Dist-Osmanabad,

2) The State of Maharashtra

...RESPONDENTS

...
Mr. Sanket S. Kulkarni Advocate h/f. Mrs.
Rashmi S. Kulkarni Advocate for Applicant.
Mr.E.S. Murge Advocate for Respondent No.1.
Mr. M.M. Nerlikar, A.P.P. for Respondent No.2.

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

DATE : 27TH JULY, 2015

ORDER :

1. Heard counsel for the Applicant. He

submits that the trial Court has wrongly acquitted the Respondent No.1 - accused. The Respondent No.1 had taken loan of Rs.90,000/- to help her grandson to go abroad and against such transaction, the Respondent No.1 had issued cheque, which bounced. According to the counsel, the trial Court did not appreciate the evidence properly and although the Respondent No.1 put her signature on the statement recorded under Section 313 of the Code of Criminal Procedure, the trial Court wrongly held that the Respondent No.1 was illiterate and bank account opening form was doubted. According to the counsel, the trial Court has wrongly acquitted the accused in the face of evidence brought on record of the witness from the bank. The concerned record was maintained by the bank in the ordinary course of business. The counsel submits that leave deserves to be granted.

2. The counsel for Respondent No.1 - accused submits that the Applicant is son of accused. The

accused has three sons and one daughter. All the sons are well settled and there was no reason for the accused to ask for hand loan of Rs.90,000/- for her grand-son from another son. The counsel submits that the accused was earlier living with the Applicant and as she was not being looked after she shifted to her daughter and thereafter present false case was brought about. The counsel submits that when the accused was earlier living with the Applicant, at that time the Applicant had got the bank account opened and accused was never transacting that account and cheque has been misused to bring liability against her. The counsel referred to earlier other disputes which led to false mutation entries which were challenged. The counsel submits that the cheque is stated to have been issued on 4th January 2013 and the Judgment of the trial Court itself shows that there were strained relations between the parties even prior to that, because of filing of Case bearing No. R.O.R. 199 of 2012, which has been

referred to by the trial Court. Thus, according to the counsel, the accused has been rightly acquitted by the trial Court.

3. Going through the original record available and the reasons recorded by the trial Court, it appears that the trial Court was impressed with the defence that when the Applicant-complainant sent notice, the reason for giving amount was not mentioned in the notice. The trial Court considered the fact that financial condition of the accused was sound. The trial Court was of the view that in natural course of conduct if an amount of Rs.90,000/- was being advanced, there would be some acknowledgement taken, but there was no such proof available. Trial Court discussed the evidence of the accused that she was residing separately from her children. The trial Court discussed about the account opening form, which was brought on record. The witness from the bank admitted that on account

opening form Exhibit 32 there was no photograph of the account holder. The witness appears to have stated that there was no system of taking photographs of customers at the relevant time. Trial Court discussed the evidence of CW-2 Tulshiram that there was difference in signatures of the accused on account opening form at Exhibit 32 and on the register extract of cheque book at Exhibit 34. The trial Court raised doubt because of this. Trial Court discussed the evidence where the witness stated that when they learnt that signature differs, they have filled new form about change of signature at Exhibit 33. The trial Court further discussed that while taking the signature on the new form for change of signature, the witness has not seen identification card of the accused. The trial Court considered the earlier dispute of 2012 and discussing the evidence, raised presumption under Section 118 and 139 of the Negotiable Instruments Act and has acquitted the accused.

4. Looking to the evidence and reasonings recorded by the trial Court, it is possible view which has been taken by the trial Court. There is no reason to interfere with the acquittal.

5. For the reasons afore stated, the Application stands rejected.

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

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