IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
Criminal Appellate Jurisdiction.

CRIMINAL APPLICATION NO. 5635 OF 2013.

SHAIKH GULAM RASUL @ GULAM NABI ABDUL SHAIKH.
VERSUS
GAUTAMCHAND AMARCHAND CHHALLANI & ORS.

Appearance =>

None present for the Applicant.

Mr. Subhodh Shah, Advocate for Respondent No.1.

CORAM : M.T. Joshi, J.

DATE : 16th September, 2015.

Per Court :-

None present for the Applicant. Nobody has appeared on last 2 dates also, therefore, it was warned that if nobody turns up for the Applicant on next date, the matter will be dismissed.

[2] In the circumstances, heard Mr. Subhodh Shah, learned counsel for Respondent No.1.

[3] Accused No.2 is stated to be representative of Accused No.1 i.e. the present Respondent. Request was made to the Complainant by the accused for finance to purchase the vehicle. According to the Complainant, some false receipts were issued by Accused No.2 (not present Respondent) and some cheques were issued by the said Accused No.2.

[4] In these circumstances, the learned Judicial Magistrate, First Class, Shrirampur, District - Ahmednagar in Regular Trial Case No.64/2004 made following observations at Paragraph Nos. 14 and 15 of the Judgment dated 27th September, 2013, which read thus :-

"14. Further, it is also not the case of complainant that accused No.1 asked to accused No.2 to issue cheque to the complainant returning his 2 installments amount. so also, if there was common intention between both the accused then there was no need even to issue cheque to complainant and further asking him to pay said amount to accused No.1 after cheque is honoured. Therefore, there appears no dishonour intention or concern of accused No.1 in issuance of cheque by accused No.2. Whatever false receipts are issued that are issued by accused No.2. Similarly the cheque with overwriting and mentioning wrong name of complainant with intention not to honour it, is also issued by accused No.2. The complainant has failed to prove role or dishonest intention of accused No.1 to cheat the complainant by issuing receipts and cheque. Even if it is assumed that accused No.2 is authorized person of accused No.1 but the accused No.1 cannot be held responsible for act of accused No.2 in issuing cheque and false receipts of Paisa power company.

15. If the complaint is perused, it can be seen that it is not the case of complainant that accused represented him to obtain loan for purchase of vehicle and induced him to sign the cheques (as contended by complainant). As per the complainant, he himself obtained loan from accused No.1. He has narrated that accused has obtained his signature on 10 blank cheques at the time of loan. But apart from bare words there is no proof to that extent. so also it is not alleged that accused No.1 dishonestly induced him to issue blank cheques and then misused it. As stated above, it is nowhere alleged by the complainant that accused No.1 has dishonestly induced him to pay installments to accused No.2. so the ingredients of Section 420 of Indian Penal Code are nowhere made out against the accused No.1. Thus the ration in Hari Prasad Chamarai (supra), relied upon by the accused applies here."

[5] Observations are made on the basis of the admitted facts, which would not make out any case against the present Respondent i.e. original accused No.1.

Since there is no perversity in the reasoning, granting any leave to prefer any Appeal against the order of acquittal would be an exercise in futility. In the circumstances, following order is passed :-

ORDER

(i) Criminal Application is hereby dismissed.

(M.T. JOSHI, J.)