

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.6004 OF 2013

Mahadu Kundlik Ghongade ..Applicant

Versus

Vitthal Limbaji Wabale ..Respondent

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Mr.V.M.Lomte, advocate for applicant

Mr.P.S.Agrawal, advocate for respondent no.1

Mr.R.P.Phatake, APP for respondent no.2 - State

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CORAM : M.T. JOSHI, J.

DATE : JUNE 25, 2015

PER COURT :

Heard both sides.

2] Aggrieved by the order of learned Addl.
Sessions Judge dismissing the appeal on the ground
of maintainability, present application is filed.

3] Present respondent was prosecuted by the State for the offences punishable under Section 32-B (b & c) and 32-B(c)(i) of the Bombay Money Lenders Act, 1946. Learned Judicial Magistrate F.C., Court No.3, Hingoli in S.C.C. No.1236 of 2006 acquitted the respondent from the said offences.

4] Aggrieved by the said judgment, present applicant – Mahadu had preferred appeal being Criminal Appeal No.23 of 2013. It was titled as appeal under Section 378 of the Code of Criminal Procedure. An objection was raised that the appeal under the said section cannot be filed by the present applicant and it is nowhere mentioned in the appeal that present applicant was the victim. In the circumstances, learned Addl. Sessions Judge observed as under:-

" The Hon'ble High Court even though the appeal is not maintainable under Section 378(a) of Criminal Procedure Code, he has not preferred Appeal under Section 372 of Criminal Procedure Code. In the appeal memo he has not stated as to the victim and preferred such appeal and having right to prefer the appeal against the order passed by Court acquitting accused or convicting for less offence stating that this being a Court of appeal from conviction to entertain it. Thus simply because of reference made in his oral submissions about maintainability wherein the appellants advocate preferred to file a true copy of certified copy of judgment as referred above without explaining his category of appellant as victim it would not be justifiable to entertain this appeal to endeavour to reach to conclusion that the appellant has right to prefer appeal in this matter without such submission. Hence, this appeal is not maintainable.

Therefore, appeal is required to be dismissed."

5] Pleadings from both sides as well as true copy of the record of the criminal case, would show that present applicant had made a grievance to the Hon'ble Chief Minister that present respondent had given him a loan of Rs.50,000/- with interest at the rate of 5% per month and as a security, on the direction of present respondent, the applicant had even executed certain deed of transfer in the name of the wife of present respondent. The record would further show that present applicant was also examined as one of the witnesses, who has deposed on the line of the above statement.

6] The record further shows that on the basis of various complaints, the State has filed charge sheet in view of the FIR filed by one Sunilkumar Ramsing Pardeshi, who was working as Assistant

Registrar, Co-operative Societies, who has made inquiry into various complaints.

7] Upon hearing both sides, it is clear from the record that present applicant is the victim. He alleged that the respondent had advanced a loan of Rs.50,000/- illegally and as a security, the transfer deed was got executed in the name of the wife of present respondent.

8] The only lacuna in the appeal filed before the Sessions Court was that wrong provision of law was quoted and present applicant has failed to mention in the appeal memo, that he is victim of the offence. Learned Addl. Sessions Judge considered the arguments from both sides that the appeal is not filed under the proper provision of law and there is failure to mention that the present applicant is the victim. The record, however, would show that the present applicant claims to be

a victim and only wrong provision of law was quoted.

9] Learned counsel for the respondent, however, submits that if the matter is remanded, prejudice would be caused to the respondent, who is acquitted by learned Judicial Magistrate F.C. after trial. He submits that an irresponsible appeal preferred by present applicant has rightly been rejected by the Sessions Court. He further submits that merely because the applicant has sent certain memorandum to the Hon'ble Chief Minister, it cannot be said that present applicant is the victim.

10] Present applicant was, in fact, examined before learned Judicial Magistrate F.C. as a victim. The statement made by him would show that there was illegal money lending transaction between him and the respondent and only as a

security, the name of the wife of present respondent was lent. It is, thus, clear that present applicant is the victim of the offence. A clerical mistake in not mentioning the said fact in the appeal memo and quoting wrong provision of law has resulted in rejection of the appeal, which would, otherwise, have been heard on merit by the appellate court.

11] In that view of the matter, leave to file appeal is granted. Criminal Application is allowed.

12] The appeal be registered.

13] Heard.

14] For the reasons recorded above, the appeal stands allowed. The impugned order of Sessions Court is hereby set aside. It is hereby directed

that learned Sessions Judge shall hear the applicant on merit as per the provisions of law.

15] The observations made above are only with a view to find out as to whether, present applicant is covered by the definition of 'victim' and these observations shall not influence the Sessions Court at the time of decision of the appeal on merit. Present appeal stands disposed of accordingly.

[M.T. JOSHI, J.]