

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPLICATION NO.6353 OF 2014

Ravindra Polad More ..Applicant

Versus

Shashikant Chudaman Patil ..Respondent

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Mr.C.V.Bhadane, advocate for applicant

Mr.A.S.Savale, advocate for respondent - sole

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CORAM : M.T. JOSHI, J.

DATE : MARCH 26, 2015

PER COURT :

Heard both sides.

2] Leave to file the appeal is hereby granted.
The application for grant of leave to file the
appeal, is allowed and disposed of accordingly.

3] The appeal be registered. The appeal is
admitted.

4] By consent of the parties, heard finally as Record and Proceedings is received.

5] Aggrieved by the acquittal of the respondent from the offence punishable under Section 138 of the Negotiable Instruments Act, present appeal is preferred by the complainant.

6] The submissions from both sides as well as the record would show that the present appellant/complainant as well as the respondent were working in the same school as teachers. According to the appellant/complainant on 1st March, 2011, he had extended a short term hand loan of Rs.Two Lakhs to the respondent. Towards repayment, the respondent had issued a cheque dated 19th October, 2011 drawn on Dhulia District Central Co-operative Bank Ltd., Dhule. The cheque was presented to the said bank on the due date, however, it was returned by the bank for the

reason that the account of the respondent has insufficient funds. Therefore, statutory notice was issued to the respondent and since payment was not made by him within the statutory period, the complaint was filed.

7] The defence of the respondent was that the cheque was, in fact, missing. There were strained relations between the parties prior to the alleged issuance of the cheque. In the circumstances, the cheque must have reached to the hands of present appellant/complainant being colleague and therefore, he claimed acquittal.

8] Before learned Judicial Magistrate F.C., while the complainant examined himself and the Branch Manager of the bank who spoke about withdrawal of the amount of Rs.Two Lakhs by the complainant from his saving account on the date of alleged transaction of hand loan, from the side of the

respondent, three eye witnesses were examined. One of them namely, Shri. Nimba Patil, who was one of their colleagues, deposed as supported by the certified copy of the complaints that there was, in fact, scuffle between the present appellant/complainant and the respondent regarding which, on 16.10.2010 police complaints were filed. The extract regarding the counter complaint was placed on record. Besides, it was suggested that there was seniority dispute between the parties and therefore, the defence witness no.2 – Shri. Desale, Headmaster was examined.

9] Upon perusal of the impugned judgment, it appears that learned Judicial Magistrate has made a mistake while appreciating the evidence of the Branch Manager that the himself had withdrawn the amount and the cross-examination would show that the word "self", as is found in the extract of the account, means the amount has been by himself.

Rest of the findings of learned Judicial Magistrate F.C. are based on material on record, that when there were strained relations between the parties, in normal course, no transactions of hand loan could be possible without maintaining any diary, noting or any document to that effect.

10] Upon hearing both sides, in my view, a reasonable and probable view has been taken by learned Judicial Magistrate F.C. for the reasons forwarded hereinabove.

11] In the circumstances, in the present Criminal Appeal, there is no need to interfere with the reasonings of learned Judicial Magistrate F.C. The Criminal Appeal is, therefore, dismissed.

[M.T. JOSHI, J.]

kbp