

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.5641 OF 2012

Eknath s/o Arjunrao Shinde ... APPLICANT

VERSUS

Prakash s/o Ananda Korade ... RESPONDENT

.....
Shri Sachin S. Deshmukh, Advocate for applicant
Shri R.M. Giri, Advocate for respondent
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W I T H

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CORAM: M.T. JOSHI, J.

DATED: 13th October, 2015.

ORAL ORDER :

1. Heard both sides.

2. The respondent was acquitted by the learned Judicial Magistrate, First Class, Sengaon from the offence punishable under Section 138 of the Negotiable Instruments Act, vide judgment and order 2nd November 2012 passed in S.C.C. No.33/2011 and S.C.C. No.21/2011. The original complainant wants to file appeals against the said orders of acquittal in both the proceedings. Therefore, the present applications for leave to file the appeals are filed.

3. Reading of the reasonings of the learned Judicial Magistrate, First Class would show that, for want of finding of passbook in both cases and proof of the written agreement, which was filed on record in Summary Case No.21/2011 after the closure of the evidence, interalia the respondent was acquitted in both the proceedings.

4. Considering the fact that the applicant is pursuing his remedy for substantial amount under the cheques, leave to file the appeals is hereby granted. Both the applications are accordingly allowed and disposed of.

5. The appeals be registered as per the due procedure of law.

6. For the above reasons, the appeals are also heard.

7. The impugned judgments passed by the learned Judicial Magistrate, First Class are hereby quashed and set aside and instead, the proceedings are remitted back to the learned Judicial Magistrate, First Class, Sengaon. The learned Judicial Magistrate, First Class, Sengaon to allow both the sides to lead the evidence qua the execution of the agreement and/or for filing the pass books mentioned in the judgments. The appellant to conclude his evidence in both the proceedings within a period of four months from the date of appearance.

Both the sides are directed to appear before the learned Judicial Magistrate, First Class, Sengaon in each of the proceedings on 19th November 2015.

Both the appeals are disposed of.

8. Record and proceedings be sent back to the Court of learned Judicial Magistrate, First Class, Sengaon in both the proceedings.

(M.T. JOSHI, J.)

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