

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

Criminal Application No.6529 of 2014

Suresh Anandraj Jain.

.. Applicant.

Versus

Mohammad Naiem Shaikh Akbar.

.. Respondent.

Shri. Girish Rane, Advocate, for applicant.

Shri. B.S. Deshmukh, Advocate, for respondent.

CORAM: T.V. NALAWADE, J.

DATE : 17th AUGUST 2015

ORDER:

1) The application is filed under section 378(4) of the Code of Criminal Procedure, 1973 for grant of leave to file appeal against the judgment and order made in S.C.C. No.2246 of 2007 which was pending before the Judicial Magistrate, First Class, Jalgaon. The Judicial Magistrate has acquitted the respondent.

2) Learned counsel for the applicant is heard. Some hearing was given to the learned counsel for the respondent, accused. This Court has seen the record and the reasoning.

3) It is the case of the complainant that he had sold some machinery to the accused on 1-2-2006 and at that time only part of the price of the machinery was paid in cash by the accuse and for remaining payment he had given the cheque of Rs.55,000/-. This cheque bounced and after following procedure complaint was filed under section 138 of the Negotiable Instruments Act.

4) The trial Court has acquitted the accused on some grounds as follows :

(i) The accused has given evidence that he had some transaction of loan with the complainant and he had paid entire amount due to the complainant on 22-5-2007. According to him, some blank cheques were given to the complainant in respect of the transactions and one of such cheques is misused by the complainant.

(ii) The complainant has not made entry of the transaction in question to his accounts which need to be audited.

5) By making the aforesaid observations and also by making one more observation that it was proprietary concern which had made transaction and the complaint is filed by the complainant in his own name, the trial Court has given acquittal.

6) Some observations are made with regard to so called document which was executed by accused which is at Exhibit 39. The observations are made with regard to the necessity of proper stamp duty. There is revenue receipt affixed on this document and such document can be treated even as receipt for the present purpose. This document was executed in favour of Suresh and the cheque was also issued in the name of Suresh. In respect of the exact amount mentioned in the document the cheque was issued and it bounced. In such a case when there is evidence of the accused on oath only the evidence on oath in such a case may not be sufficient to rebut the case of the complainant. No record of any kind was with the accused to substantiate his case of other transactions with the complainant. This Court holds that there is good arguable case for the applicant in the appeal.

7) In the result, the application is allowed. Leave is granted.

8) The appeal is admitted. Notice after admission. It is waived by learned counsel for the respondent.

Sd/-
(T.V. NALAWADE, J.)

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