

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.5968 OF 2015

Mirza Munir Beg s/o. Khalil Beg,
Age 47 years, Occ. Business and
Agri., r/o. Kazipura, Hingoli
Tq. Hingoli .. Applicant

Vs.

Shaikh Wahid s/o. Moinoddin,
Age 40 years, Occ. Business,
r/o. Paltan, Hingoli,
Tq. and Dist. Hingoli .. Respondent

Mr.S.S.Londhe, Advocate for the applicant

CORAM : M.T. JOSHI, J.
DATE : 19/11/2015

ORAL ORDER :

Heard.

2] Aggrieved by acquittal of the respondent/accused from the offence punishable under Section 138 of the Negotiable Instruments Act, the applicant/complainant wants to prefer an appeal and therefore, present application for grant of leave to file appeal, is filed.

3] According to the applicant/complainant since the respondent/accused was in need of an amount of Rs.Two Lakhs, he, being in cordial relations with the

respondent, advanced a hand loan to the respondent. Towards repayment of the amount, the respondent had issued a cheque dated 11th March, 2013. When the said cheque was presented to the bank on the due date, it was returned with endorsement of having insufficient funds. Therefore, a statutory notice was issued to the respondent and upon receipt of acknowledgement, since the amount was not paid within the prescribed period, the complaint came to be filed.

4] The defence of the respondent was of denial of the liability. He, however, did not dispute passing of the cheque and his signature over the same. It was, therefore, argued before the trial court that the presumption that the cheque was passed towards legally enforceable liability, had arisen. Learned Judicial Magistrate F.C., however, took into consideration the following facts.

. That, according to the applicant/complainant, the amount of Rs.Two Lakhs was withdrawn by him from the account of his own shop. He, however, admitted that the entry regarding withdrawal of the amount from the account of his own shop, was not made in the account

book. Further, the witness to the transaction namely, Habu Ghuge, was not examined.

5] In the circumstances, it was observed by learned Judicial Magistrate F.C. that the applicant, who normally used to take entries in the account book of his business, did not take entry of such a substantial amount of Rs. Two Lakhs, creates doubt. Further, the admission of the applicant in the cross-examination that he did not know as to who had scribed the contents on the cheque, however, he only knows the signature of the respondent, also creates suspicion. Considering all these facts on record, learned Judicial Magistrate F.C. has observed that the presumption was rebutted and therefore, acquittal of the respondent came to be recorded.

6] Learned counsel for the applicant has relied upon the ratio laid down in the case of ***Shanaz D'souza Vs. Sheikh Ameer Saheeb and anr., 2007(3)Mh.L.J. 324*** wherein, on the facts of the case, it was held that the accused has failed to discharge onus that the cheque was issued by the accused without consideration.

7] Upon hearing learned counsel for the applicant, in my view, a reasonable and probable view of the matter has been taken by learned Judicial Magistrate F.C. It was held that the respondent has successfully rebutted the presumption with preponderance of probabilities. In the circumstances, grant of leave to file appeal, would be an exercise in futility.

8] In the result, present application for grant of leave to file appeal, is rejected. Leave refused.

[M.T. JOSHI]
JUDGE

kbp