

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

APPLICATION FOR LEAVE TO APPEAL (PVT) NO.129 OF 2015

Shri.Ajay Ravindranath Tendulkar	...	Applicant
V/s.		
Shr.Suryakant Ramchandra		
Bharankar & Anr.	...	Respondents

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Mr.Rajesh S.Patil, Advocate for the Applicant.
Ms.Anamika Malhotra, APP for the Respondent/State.

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CORAM : ABHAY M. THIPSAY J.

DATED : 20TH APRIL 2015

P.C.

1. The applicant had prosecuted the respondent No.1 on the allegation of his having committed an offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The Judicial Magistrate, First Class, Ratnagiri, after holding a trial, found the respondent No.1 not guilty and passed an order of acquittal. The applicant is aggrieved by the said order of acquittal, and is, therefore, by the present application, seeking special leave of this Court to file an appeal therefrom.

2. I have heard Mr.R.S.Patil the learned counsel for the

applicant in support of the application. I have gone through the application and annexures thereto, which include a copy of the deposition of witnesses recorded during the trial.

3. For the sake of convenience and clarity, the applicant shall, hereinafter, be referred to as “the complainant” and the respondent No.1 as “the accused”.

4. The case of the complainant was that he had given an amount of Rs.5,00,000/- in cash to the accused in the month of June 2013. That, the accused had agreed to repay the amount till November 2013 and towards the repayment issued a cheque dated 26/11/2013 in the sum of Rs.5,00,000/- in favour of the complainant. This was dishonoured and since in spite of demand notice, the amount of cheque was not paid, the complaint was lodged.

5. The defence, as taken by the accused during the trial, was that the complainant lends money on interest; and that while lending money, had obtained some blank signed cheques from the accused. That, actually no amount was due and payable to the complainant on the date of the cheque.

6. In the complainant's cross-examination, he was asked as to whether on 31/08/2013 an amount of Rs.50,000/- was received by him from the accused, by a bearer cheque. The complainant denied the same. The complainant was also asked

whether on 26/09/2013 an amount of Rs.50,000/- was paid to him by the accused by a particular cheque. The complainant denied that also. The accused examined two bank officers to prove these payments by the accused to the complainant.

7. These payments were received by the complainant from the accused after he had given the loan to the accused. A contention is put forth before this Court that these payments were in connection with some other transaction between the complainant and the accused. Such a contention cannot be accepted. In the first place, that, there was any other transaction between the complainant and the accused, has not been mentioned in the complaint. Secondly, when the complainant was questioned about having received the aforesaid amounts from the accused on the given dates, he flatly denied the same. He did not state before the Magistrate that 'he had received the amounts, but they were in respect of a different transaction' -- leave alone the question of mentioning what was the 'other transaction'.

8. When such was the case, the doubt felt by the Magistrate about the truth of the complainant's version is proper. At any rate, it is absolutely reasonable.

9. There is no merit in the application.

10. Leave refused.

11. The application is rejected.

(ABHAY M. THIPSAY J.)