

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

APPLICATION FOR LEAVE TO APPEAL (PVT) NO.141 OF 2013

Bhagwan Laxman Gaikwad ... **Applicant**

V/s.

Pandit Yashwant Avate & Anr. ... Respondents

• • • • •

Mr.I.M.Khairdi, Advocate for the Applicant.

Mr. Atul Kore i/b. Nitin Dalvi, Advocate for the Respondent No.1.

Ms. Anamika Malhotra, APP for the Respondent/State.

• • • •

CORAM : ABHAY M. THIPSAY J.

DATED : 30TH JANUARY, 2015

P.C.

1. The applicant is the original complainant. He had filed a complaint against respondent No.1 herein alleging commission of offence punishable under Section 138 of the Negotiable Instruments Act. The Judicial Magistrate, First Class, Solapur, after holding a trial, found the respondent No.1 not guilty and passed an order of acquittal. Being aggrieved thereby, the applicant has approached this Court by this present application seeking leave to file an appeal against the said acquittal.

2. I have heard Mr.Khairdi, the learned counsel for the

applicant. With his assistance, I have gone through the application, the evidence adduced during the trial, the original complaint and the impugned judgment.

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

4. The case of the complainant is that an amount of Rs. 1,50,000/- was given by him to the accused as a hand loan sometime around October, 2006. That, for repayment of said hand loan, the accused issued cheque dated 20th May, 2008, which was dishonoured and as in spite of demand of amount of the said cheque, it was not paid, the accused was prosecuted. The substance of the defence taken by the accused during trial was that the accused had not taken any such hand loan from the complainant. The accused did admit that there were some financial transactions between him and the complainant, but claimed that the amount, which had been taken by him from the complainant, had been returned to him with interest. The main contention of the accused was that the complainant is doing the business of money lending unauthorizedly.

5. Admittedly, except the cheque itself, there was no other evidence of the hand loan. Thus, the fact that the hand loan had

been taken was sought to be supported only by the existence of the cheque.

6. During the trial, it was revealed that the accused had issued a cheque in the sum of Rs.3,60,000/- to the son of the complainant. This cheque was issued allegedly on 10/05/2007. The Magistrate observed that when the case of the complainant was that the accused was not returning the amount of Rs. 1,50,000/- taken by him sometime in the year 2006, it did not appeal to reason that the son of the complainant would lent an amount of Rs.3,60,000/- to the accused. The Magistrate noted that the complainant denied any knowledge about the transaction between the accused and his son, but did not believe the correctness of the denial. The learned Magistrate also observed that the complainant, in the cross-examination, said that 'he was unable to state as to how much amount he had advanced and to how many persons.' The Magistrate, from this, came to the conclusion that the complainant was not interested in disclosing certain relevant aspects before the Court. It also appears that the complainant himself admitted that the writing on the cheque was not of the accused. Interestingly, the complainant, in reply to a question put in the cross-examination to the effect that the cheque had not been written by the accused replied that the matter on the cheque was written by a friend of the accused in the presence of the complainant and added, that he did not know who was that friend.

7. The doubt felt by the learned Magistrate about the truth of the complainant's case cannot be said to be unreasonable. The view taken by the Magistrate is a possible view of the matter. It is well settled that when such is the position, grant of leave would be futile.

8. Leave refused.

9. The application is rejected.

(ABHAY M. THIPSAY J.)