

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

APPLICATION FOR LEAVE TO APPEAL (PVT) NO.159 OF 2013

Manmandir Cooperative Bank Ltd, Vita ... **Applicant**
V/s.
Adinath Raghunath Visapur & Anr. ... **Respondents**

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Mr.Pradip K. Patole for S.S.Patwardhan, Advocate for the Applicant.

Mr.Nagesh Y.Chavan, Advocate for the Respondent No.1.

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

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CORAM : A. M. THIPSAY J.

DATED : 13TH JANUARY, 2015

P.C.

1. Heard Mr.Patole, the learned counsel for the applicant.
Heard Mr.Chavan, the learned counsel for the respondent No.1.

2. The applicant had prosecuted the respondent No.1 on the allegation of having committed an offence punishable under Section 138 of the Negotiable Instruments Act. The Judicial Magistrate, First Class, Vita, Sangli after holding an inquiry found the respondent No.1 not guilty and passed an order of acquittal. The applicant - a Cooperative Bank - is aggrieved by the said order of acquittal and is, by the present application, seeking leave to appeal from the judgment as passed by the learned Magistrate.

3. With assistance of the learned counsel for the parties, I have gone through the impugned judgment.

4. The case of the applicant was that the respondent No.1 was a guarantor in respect of the loan disbursed to one Deepak Bajirao Shinde. The loan amount was of Rs.4,25,000/-. That, the said Deepak Shinde did not repay the loan amount and, therefore, the respondent No.1- a guarantor - was called upon to repay the loan amount together with interest. That, the respondent No.1, therefore, issued the cheque in question, which was in the sum of Rs.4,75,000/-. The said cheque was dishonoured and as the amount thereof was not paid in spite of the demand notice, the respondent No.1 was prosecuted as aforesaid.

5. The respondent No.1 took a defence during the trial that the cheque in question had not been issued by him to the applicant in his capacity as the guarantor for the repayment of the loan taken by the said Deepak Shinde. The respondent No.1 specifically contended that he had earlier taken a loan from the applicant bank and that, at that time a blank signed cheque had been taken from him by the bank towards security for the repayment. The respondent No.1 submitted that the loan taken by him has been duly repaid by him and a discharge has been given to him by the applicant bank, but that, dishonestly, the cheque taken from him at that time was misused in the context of the loan taken by the said Deepak Shinde.

6. The learned Magistrate considered this defence of the respondent No.1 plausible.

7. I have gone through the reasoning of the learned Magistrate in that regard.

8. In Paragraph 17 of the impugned order, the Magistrate observed that there was no correspondence showing that the applicant had invoked the guarantee given by the respondent No.1 by writing to him that the loan had not been repaid by the said Deepak Shinde and that, therefore, respondent No.1 should pay the same. The Magistrate also observed that the contract between the parties specifically provided that the liability of the guarantor would arise only after demand would be made to him in writing on the default of the borrower. By this, the Magistrate wanted to convey that in absence of a written demand notice, the respondent No.1, as the guarantor, would not have been liable to pay the amount of loan taken by the said Deepak Shinde.

9. The Magistrate also observed that since the fact that the respondent No.1 had earlier obtained loan from the applicant bank was not in dispute, the possibility of the applicant having misused a cheque obtained from the respondent No.1 at that time, could not be ruled out.

10. The reasoning of the Magistrate is proper and legal. In any case, the view taken by the Magistrate is a possible view of the evidence that was adduced before him. It is well settled that while considering the question of grant of leave, the principles, on which an order of acquittal is liable to be interfered with, need to be kept in mind.

11. Since the view taken by the Magistrate is, in any case, a possible view, it would be futile to grant leave.

12. Leave refused.

13. The application is rejected.

(A. M. THIPSAY J.)