

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.35 of 2015

Abbas Ali Turabali Rupani .. Applicant
Versus
The State of Maharashtra & Anr .. Respondents

Mr.Satyaram.R.Gaud, Advocate for the applicant.

Mrs.M.R.Tidke, APP for the Respondent State.

CORAM : ABHAY M. THIPSAY, J.

DATED : 30th JANUARY 2015.

P.C. :

1 The applicant has filed a complaint against the respondent no.2 herein, alleging commission of an offence punishable under section 138 of the Negotiable Instruments Act. The learned Metropolitan Magistrate, 70th Court, Mazgaon, Mumbai, after holding a trial, acquitted the respondent no.2. Being aggrieved by the said order of acquittal, the applicant is, by the present application, seeking Special leave to file an Appeal, challenging the said order of acquittal.

2 I have heard Mr.S.R.Gaud, learned counsel for the applicant in support of the application. I have been taken through the application, the annexures thereto, and more particularly, the impugned judgment.

3 For the sake of convenience and clarity, the applicant shall be hereinafter referred to as 'the complainant', and respondent no.2 as 'the accused'.

4 The case of the complainant, as reflected from the complaint, was that he had advanced a friendly loan of Rs.15,00,000/- to the accused in repayment of which the accused had issued a cheque in the sum of Rs.15,00,000/- which was dishonored, and which resulted in the prosecution. The case of the complainant was that the loan had been partly by cash and partly by cheque. The defence of the accused was that he had obtained a loan only of Rs.2,00,000/-, and that the complainant had at any time, obtained a blank signed cheque from the accused as security. According to the accused, the cheque in question was misused by the complainant.

5 In the course of arguments, the learned counsel for the applicant submitted that an amount of Rs.5,00,000/- out of the said loan had been paid by a cheque, and the remaining amount of Rs.10,00,00/- was given by cash. It was submitted that even the payment made by cheque was not taken into consideration by the learned Magistrate.

6 The learned Magistrate doubted the truth of the case of the complainant. The reasons in that regard, as reflected from the judgment are as follows :-

- (i) The complainant was not able to produce any record to show on which date some amounts had been paid by him to the accused.

- (ii) The complainant did not or could not disclose the details or the dates on which the payment of loan by cash was allegedly made by him to the accused.
- (iii) The complainant admitted to have given similar friendly loans to three other persons.
- (iv) The complainant admitted that the matter on the cheque was written by the complainant himself; and from this, the Magistrate concluded that clearly the accused had given a blank cheque to the complainant.

7 The Magistrate upon a consideration on these factors held that the complainant had failed to prove that he had advanced a loan of Rs.15,00,000/- to the accused which was the amount of the cheque.

8 The view of the matter as taken by the Magistrate appears to be proper and legal. As such, this is not a fit case where leave to Appeal should be granted.

9 Leave refused.

10 Application is rejected.

(ABHAY M.THIPSAY, J)