

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.60 OF 2015

FAYAZ JAMALUDDIN SHAIKH)...APPLICANT

V/s.

STATE OF MAHARASHTRA & ANR.)...RESPONDENTS

Mr.N.R.Bubna, Advocate for the Applicant.

Ms.S.S.Kaushik, APP for the Respondent - State.

CORAM : ABHAY M. THIPSAY, J.

DATE : 2nd MARCH 2015.

P.C. :

1 The applicant had prosecuted respondent no.2 herein on the allegation of having committed the offences punishable under Sections 406 and 420 of Indian Penal Code (IPC). The Judicial Magistrate First Class, Thane, after holding a trial, found respondent no.2 not guilty and hence passed an order of acquittal. The applicant is aggrieved by the said order of acquittal. He is, therefore, by the present application, seeking special leave to file appeal therefrom.

2 I have heard Mr.N.R.Bubna, the learned counsel for the applicant, in support of the application. With his assistance, I have gone through the annexures to the application, and more particularly, the impugned judgment.

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

4 The case of the complainant, as can be gathered from the complaint and the contentions raised before the Magistrate during the trial, was in brief that, the complainant was holding 110 equity shares of a Private Limited Company, of which the accused was also a Director. The complainant and the accused are real brothers. The accused wanted to have a complete control over the company, and that, for that reason, he had been threatening and harassing the complainant and his family members, with the object of compelling them to transfer the equity shares held by the complainant, in the name of the accused.

Troubled by this, the complainant did transfer all the shares to the accused, but the accused did not pay for the price of the said shares.

5 During the trial, reliance was placed on a number of documents by the complainant as well as by the accused. There was some dispute as to whether the complainant could have had any shares in the company at all, with a reference to the alleged income of the complainant.

6 Among other things, the Magistrate observed that the version of the complainant was quite improbable, as, if the accused had been threatening him since 1982 for transfer of the shares, why would the complainant not lodge a report with the police till the year 1983, remained unexplained. The Magistrate further observed that, the version of the complainant that inspite of repeated threatening by the accused, the complainant still relied on the assurances of the accused, that he would be paid for the shares transferred, was also not believable.

7 The contention raised by the learned counsel for the applicant is basically to the effect that certain defences taken by the accused during the trial were false. I am not impressed by this contention. The learned counsel for the applicant also urged that a number of documents were tendered during the trial and these documents may kindly be referred to.

8 I am not ready to adopt such a course also, for the simple reason that, the dispute between the complainant and the accused, even if real and genuine, is pre-dominantly of a civil nature. An attempt to give criminal colour to the transaction is based only on the allegation that the accused had, from the inception, dishonest intention, but in that context, the question of the delayed making of the complaint cannot be overlooked.

9 It cannot be said that, the doubt, felt about the truth of the complainant's case by the Magistrate, is unreasonable or was not borne out from the material, that was before the Magistrate. Though it may not be possible to agree with each and every

conclusion arrived at by the Magistrate, the fact remains that his ultimate conclusion, that no case of an offence of criminal breach of trust and / or cheating had been established, appears to be correct.

10 In any case, the view of the matter, as taken by the Magistrate, is a possible view. It is well settled that when such is the position, grant of leave would be futile.

11 Leave refused.

12 The application is rejected.

(ABHAY M. THIPSAY, J.)