

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

APPLICATION FOR LEAVE TO APPEAL (PVT) NO.49 OF 2013

Smt.Vidya Gopal Khandale	...	Applicant
V/s.		
Shri.Madhukar Balasaheb Bait & Anr.	...	Respondents

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Mr.Subodh S. Shah, Advocate for the Applicant.
Mr.V. V. Mohite i/b. Mr.S.L.Babar, Advocate for the Respondent No.
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Ms.S.S.Kaushik, APP for the Respondent/State.

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CORAM : ABHAY M. THIPSAY J.

DATED : 16TH FEBRUARY, 2015

P.C.

1. The applicant had prosecuted the respondent No.1 on the allegation that the respondent No.1 had committed an offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The Judicial Magistrate, First Class, Pune 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, by the present application, seeking special leave of this Court to file appeal therefrom.

2. I have heard Mr.Shah, the learned counsel for the applicant. With his assistance, I have gone through the complaint - copy of which is annexed to the application, a copy of the impugned Judgment and the relevant part of the deposition of the applicant.

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 complainant's case was that the accused had represented to the complainant that he would secure a good plot of land for the complainant and that, for that purpose, the complainant should invest some money with the accused. That, the complainant on 14/08/2010 gave an amount of Rs.5,50,000/- to the accused as hand loan by a cheque. That, the accused had agreed to pay compensation (नुकसानभरपाई) to the tune of 15% of the said amount per month. That, the accused agreed that he would return the entire amount of Rs.5,50,000/- within six months or would give a plot of land to the complainant. That, the accused gave two cheques to the complainant; one in the sum of Rs. 7,50,000/- and the other in the sum of Rs.1,00,000/-. Both the cheques were dishonoured with the remarks 'Funds Insufficient' and since the amount of the cheques was not paid, in spite of demand notice, the accused was prosecuted.

5. The learned Magistrate disbelieved the version of the complainant. The learned Magistrate observed that the defence of the accused, as put forth by him, was probable. The defence was to the effect that the complainant had given a sum of Rs. 5,50,000/- to the accused for investing the same in the securities of Arya Group Tourism and Pvt. Ltd., where the accused was working. The Magistrate also observed that it was undisputed that an amount of Rs.20,00,000/- were invested by the complainant in the said Company and that, the Pune Branch of the said Company was not working and that, the complainant did not get her money back. The Magistrate, therefore, thought it plausible that the amount in question had been given by the complainant not as a hand loan and/or for the purchase of the plot, but for investing it in the said Company. The Magistrate accepted the version of the accused as possible that the complainant had attempted to recover the amount, lost by her/invested in the Company, from the accused on the ground that the accused had been working there.

6. The Magistrate also observed that when the amount paid by the complainant to the accused was Rs.5,50,000/-, why and how the accused had paid an amount of Rs.8,50,000/- within a period of one year was not clear. The Magistrate thought that, in the circumstances, it was not established that the cheques in question had been issued in the discharge of legally enforceable debt or other liability. The reasoning of the Magistrate appears to

be proper and legal. In fact, it appears from the notes of evidence that the matter in the cheques had been written by two different inks.

7. The view of the matter as taken by the Magistrate is proper and legal. There is no merits in the application.

8. Leave refused.

9. The application is rejected.

(ABHAY M. THIPSAY J.)