

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.50 OF 2011

GAUTAM NATHA DHAKTODE)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA & ANR.)...RESPONDENTS

Mr.Santosh S. Mahamuni, Advocate for the Applicant.

Mrs.S.V.Gajare, APP for the Respondent - State.

CORAM : ABHAY M. THIPSAY, J.

DATE : 17th FEBRUARY, 2015.

P.C. :

1 The applicant had prosecuted respondent no.2 on the allegation of she having committed the offence punishable under Section 138 of Negotiable Instruments Act. The learned Magistrate, 60th Court, Kurla, Mumbai, after holding a trial found respondent no.2 not guilty and passed an order of acquittal. The applicant is aggrieved by the said order of acquittal. He, therefore, by the present application, is seeking special leave of this court to file an appeal therefrom.

2 I have heard Mr.Santosh Mahamuni, the learned counsel for the applicant. With his assistance, I have gone through the application, the impugned judgment, and the notes of evidence that was recorded during the trial.

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

4 The case of the complainant was that he had given friendly loan of Rs.5 Lac to the accused during the period from 12th October 2010 to 15th April 2012. That, for repayment thereof, the accused had issued a cheque dated 8th February 2013 in the sum of Rs.5 Lac in favour of the complainant, which, on presentation, was dishonoured with the remark "Funds Insufficient". That, since the amount of the cheque was not paid inspite of a demand notice, the prosecution was launched.

5 The learned Magistrate doubted the truth of the claim that a friendly loan of Rs.5 Lac had been paid to the complainant by the accused.

6 According to the complainant, out of the amount of Rs.5 Lac, the amount of Rs.1,50,000/- was paid to the accused by three cheques, and the rest of the amount i.e. the amount of Rs.3,50,000/- was given by cash on 15th April, 2012.

7 The defence of the accused was that some amounts had been received by her from the complainant, but that, they were repaid. Her defence was that, at no point of time, the amount of Rs.5 Lac was received by her from the accused. According to her, when the amounts were advanced to her by the complainant, he had obtained two blank signed cheques from the accused, one of which, was misused by the complainant by putting the amount of Rs.5 Lac thereon.

8 The Magistrate observed that the writing on the cheque tallied with the writing on the deposit slip of the cheque. He, therefore, concluded that the writing on the deposit slip, as per the case of the complainant, could not be of the accused, and therefore, felt the theory of the accused that a blank signed cheque had been handed over by her to the complainant, probable.

9 The Magistrate also observed the financial position of the complainant, and doubted whether on a given date, he was in a position to pay cash of Rs.3,50,000/- at a stretch to the accused.

10 The conclusion arrived at by the Magistrate that a blank signed cheque had been given by the accused to the complainant, and that the complainant had put the figure of Rs.5 Lac thereon, appears to be proper and legal. When this was the position, and when the complainant had not been able to show that the amount that was put by him i.e. amount of Rs.5 Lac, was

indeed due and payable to him by the accused, the order of acquittal must be held to be proper and legal.

11 In any case, it cannot be said that the view of the matter, as taken by the Magistrate, is not a possible view. It is well settled that in such situation, grant of leave would be futile.

12 Leave refused.

13 The application is rejected.

(ABHAY M. THIPSAY, J.)