

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

APPLICATION FOR LEAVE TO APPEAL (PVT) NO.75 OF 2015

Sankathaprasad R. Dubey ... **Applicant**

V/s.

The State of Maharashtra & Anr. ... **Respondents**

.....

Mr.Rahul Karnik, Advocate for the Applicant.

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

....

CORAM : ABHAY M. THIPSAY J.

DATED : 3RD MARCH 2015

P.C.

1. The applicant had prosecuted the respondent No.2 herein on the allegation that he had committed an offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The Metropolitan Magistrate, 43rd Court, Borivali, after holding a trial, found the respondent No.2 not guilty and hence passed an order of acquittal. The applicant being aggrieved thereby, is, by the present application, seeking special leave to file an appeal from the said order of acquittal as contemplated under Section 378(4) of the Code of Criminal Procedure.

2. I have heard Mr.Karnik, the learned counsel for the applicant in support of the application at quite some length. With

his assistance, I have gone through the impugned Judgment and the complaint.

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 complainant's case was that he had advanced a hand loan of Rs.3,70,000/- to the accused and that, in part repayment thereof, the accused had issued a cheque in the sum of Rs.1,00,000/- on 25/11/2008, which was dishonoured on presentation and since the amount thereof was not paid in spite of a demand notice, the complaint was lodged.

5. In the cross-examination, the complainant admitted that an amount of Rs.2,70,000/- by cash was paid not to the accused, but to one Babulnath Dubey, who apparently, was a partner of the complainant as well as the accused in some business. These facts had not been disclosed by the complainant in the complaint.

6. The learned counsel for the complainant submitted that the claim with respect to the amount of Rs.2,70,000/- as raised by the complainant might not be true, but the claim of his having handed over a loan of Rs.1,00,000/- was true, in as much as the said amount of Rs.1,00,000/- had been paid to the accused by a cheque. However, admittedly, the payment by cheque was

not proved during the trial by producing the relevant bank records.

7. Even otherwise, it was apparent that the complainant had tried to suppress the real nature of transaction between him and the accused and the real purpose for which the cheque had been issued. Since the learned Magistrate observed this, he felt a doubt about the version of the complainant and, therefore, doubted that whether the cheque in question has been issued in discharge of legally enforceable debt or other liability.

8. The doubt felt by the Magistrate cannot be said to be unreasonable or not borne out from the facts of the case as were before the Magistrate. Once that is so, it cannot be that the view taken by the Magistrate is not a possible view.

9. It is well settled that in such circumstances, grant of leave would be futile.

10. Leave refused.

11. The application is rejected.

(ABHAY M. THIPSAY J.)