

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.55 OF 2014

Balasaheb Choudhary**.. Applicant***Versus***Nagnath Gena Jagtap & Anr****.. Respondents**

Ms.Rutuja V. Pradhan, Advocate for the applicant.

Ms.Vandana, Advocate for the respondent no.1.

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

CORAM : ABHAY M. THIPSAY, J.**DATED : 21st APRIL, 2015**

P.C. :

1 The applicant had prosecuted the respondent no.1 herein on the allegation of his having committed an offence punishable under section 138 of the Negotiable Instruments Act. The Judicial Magistrate, First Class, Vashi, after holding a trial, found the respondent not guilty, and passed the order of acquittal. The applicant is aggrieved by the said order of acquittal, and is, by the present applications, seeking special leave of this Court to file an Appeal therefrom.

2 In the peculiar facts and circumstances of the case, it was thought desirable to give a notice of this application to the respondents also. Accordingly, the respondent no.1 has entered an appearance through counsel, and I have heard Ms.Vandana, learned counsel for the respondent no.1.

3 For the sake of convenience and clarity, the applicant shall hereinafter be referred to as 'the complainant' and the 'respondent no.1' as 'the accused'.

4 A perusal of the impugned judgment shows that the Magistrate framed two points for determination. One (Point no.2) was *whether the cheque that had been issued by the accused, was in discharge of a legally enforceable liability*. The Magistrate answered this point in the affirmative. The other (point no.1) as framed by the Magistrate was *whether the notice of demand that had been issued by the complainant to the accused, was a valid notice*. This was answered by the Magistrate in the negative.

5 I have heard the learned counsel for the parties at quite some length, though the question is only of grant of leave.

6 Basically, the notice is held to be bad and invalid because it had been issued **not** to the accused, but to the wife of the accused - Smt.Neela Jagtap. The complainant had projected and treated the liability as that of the wife of the accused, and it is submitted that it is because of this understanding that the notice was addressed to the wife of the accused. It is submitted that a copy of the notice was sent to the accused.

7 It is not in dispute that the cheques had been signed by accused, and not by his wife. The learned counsel for the accused contends that sending a copy to the accused would not amount to sending a notice to the accused. Same was the view taken by the Magistrate.

8 The accused and his wife were residing together. An important and interesting question would arise about the validity of the demand notice and, in my opinion, that question needs to be considered after going through the contents of the notice carefully, and that too after giving full consideration of the facts of the case.

9 Leave granted.

10 Application be treated as a Memo of Appeal, and be numbered accordingly.

11 Necessary amendment be carried out within a week.

12 The Appeal be listed on board for admission on 16th June 2015.

13 It is decided by consent that the Appeal shall be decided finally at the admission stage itself.

14 Call for Record and Proceedings without paper book.

15 Issue notice to the respondents.

16 The learned counsel for the respondent no.1 waives service of notice.

(ABHAY M.THIPSAY, J)