IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.57 OF 2014

Mrs.Jaya Umesh Pawar .. Applicant
Versus
The State of Maharashtra & Anr .. Respondents

Mr.R.Sathyanarayanan, Advocate for the applicant.

Mrs.Anamika Malhotra, APP for the Respondent State.

CORAM : ABHAY M. THIPSAY, J.

DATED : 21st APRIL, 2015

P.C. :

1 The applicant had prosecuted the respondent no.2 herein on the allegation of his having committed an offence punishable under section 138 of the Negotiable Instruments Act.

2 The Metropolitan Magistrate, 7th Court, Dadar, after holding a trial, found the respondent no.2 not guilty, and passed the 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 an Appeal therefrom.

3 I have heard Mr.R.Sathyanarayanan, Advocate for the applicant in support of the application. With his assistance, I have gone through the application. I have carefully gone through the impugned judgment.

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

5 The complainant is a practicing Advocate. According to her, she had given a hand loan of Rs.11 lakhs to the accused in cash on different dates. According to her, that, towards the repayment of the said loan, the accused had issued four cheques i.e. one in the sum of Rs.One lakh, one in the sum of Rs.5 lakhs, one in the sum of Rs.3 lakhs, and one in the sum of Rs.2 lakhs. All the cheques were dishonored on presentation, and since the amount of the cheques was not paid in spite of a demand notice having been given, the complaint had been lodged.

6 The Magistrate observed that the complainant could not support the theory of having advanced a hand loan in the sum of Rs.11 lakhs, and attempted to support the theory of having advanced a hand loan to the extent of Rs.5 lakhs only. This support was sought to be drawn from the production of two promissory notes signed by the accused. The accused had contended that he had never executed these promissory notes, and the complainant had taken his signatures by saying that they were required for doing some correspondence with the Life Insurance Corporation. The promissory notes were in English, and the complainant admitted that the accused did not understand English. It was also revealed in the cross-examination that the complainant was doing the job of LIC agent. The Magistrate, therefore, believed the version of the accused as probable that blank cheques were handed over by the accused to the

complainant for depositing towards the payment of the LIC premium.

7 The Magistrate also observed that the dates of the promissory notes and the dates on which the hand loan was supposedly given by cash, did not match.

8 The Magistrate also observed that the amount of Rs.11 lakhs was quite a big amount, and it was not clear that the complainant did have that much amount with her at the material time. This is found in paragraph no.18 of the impugned judgment.

9 The Magistrate also observed that if at the complainant wanted to give hand loan to the accused, it was possible for her to pay the same by cheque. The Magistrate, in that regard, took into consideration the fact that the complainant is an Advocate and ought to know better about the legal complications that would arise by giving a hand loan in cash without obtaining any receipt.

10 The doubt felt by the Magistrate about the truth of the complainant's case is proper and legal. It may also be observed that why the accused would issue four different cheques of the same date instead of issuing one, is also not clear, and therefore, creates a further doubt about the nature of transaction between the parties.

11 The order of acquittal as passed by the Magistrate does not seem to be suffering from any error or impropriety.

12 Leave refused.

13 Application is rejected.

(ABHAY M.THIPSAY, J)