IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

APPLICATION FOR LEAVE TO APPEAL (PVT) NO.117 OF 2014

Udaybhan Singh ... **Applicant**
V/s.
The State of Maharashtra & Anr. ... **Respondent**

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Mr.Santosh S.Mahamuni, Advocate for the Applicant.
Mr.Deepak Thakre, APP for the Respondent/State.

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CORAM : ABHAY M. THIPSAY J.

DATED : 24TH APRIL 2015

<u>ORAL ORDER :</u>

1. The applicant had prosecuted the respondent No.2 on the allegation of his having committed an offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The Metropolitan Magistrate, 60th Court, Kurla, after holding a trial, acquitted the respondent No.2. The applicant is aggrieved by the said order of acquittal. He is, therefore, seeking special leave of this Court to file an appeal therefrom.

2. I have heard Mr.S.S.Mahamuni, the learned counsel for the applicant in support of the application. I have gone through the application and the annexures thereto.

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 case of the complainant was that he had advanced a hand loan of rs.6,00,000/- in cash without obtaining any receipt to the respondent No.2 and that, the respondent No.2 in repayment of the said loan, had issued a cheque in the sum of Rs. 6,00,000/-, which was dishonoured. That, since the amount of cheque was not paid in spite of a demand notice, the complaint had been lodged.

5. The learned Magistrate observed that except the bare words of the complainant and the cheque itself, there was nothing to show that the complainant had advanced an amount of Rs. 6,00,000/- to the accused. The Magistrate noted that the complainant did not satisfy as to for what purpose he had advanced such a huge amount to the accused an that too without obtaining any receipt. The Magistrate also observed that the Income Tax Returns filed by the complainant for the year 2011-2012 showed only an amount of Rs.1,80,000/- as due and payable from the accused. The accused had taken a defence that he had issued a blank signed cheque to the complainant in connection with some other transaction and that, such a cheque was taken by the complainant as a security.

6. When only an amount of Rs.1,80,000/- was shown as due from the accused in the Income Tax Returns filed by the complainant, the doubt felt by the Magistrate, about the truth of the complainant's version, cannot be said to be unreasonable.

7. It is suggested before me that the amount of loan was given on different dates and that, in the year 2011-2012 only an amount of Rs.1,80,000/- was due and payable by the accused. In other words, it is suggested that thereafter further cash amount had been given by the complainant to the accused from time to time. This is not stated anywhere by the complainant, and as such, is difficult to believe.

8. The view of the matter, as taken by the Magistrate, is a *possible view*. It is well settled that when such is the position, grant of leave would futile.

8. Leave refused.

9. The application is rejected.

(ABHAY M. THIPSAY J.)