

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.133 OF 2015

SMT.SUNANDA NANDKUMAR KULKARNI)...APPLICANT

V/s.

MRUDUL BALWANT KULKARNI & ANR.)...RESPONDENTS

Mr.Shankar Deshmukh, Advocate for the Applicant.

Mr.Deepak Thakre, APP for the Respondent - State.

CORAM : ABHAY M. THIPSAY, J.

DATE : 6th APRIL 2015.

P.C. :

1 The applicant had prosecuted respondent no.1 on the allegation that respondent no.1 had committed the offence punishable under Section 138 of Negotiable Instruments Act. The Judicial Magistrate First Class, Pune, after holding a trial acquitted respondent no.1. Being aggrieved by the said order of acquittal, the applicant has approached this court, and he is, by the present

application, seeking special leave to appeal therefrom, as contemplated under Section 378(4) of the Code of Criminal Procedure.

2 I have heard Mr.Shankar Deshmukh, the learned counsel for the applicant, in support of the application. With his assistance, I have gone through the impugned judgment, and glanced through the copy of notes of evidence, recorded during trial.

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

4 The case of the complainant, as can be seen from the complaint was that, the complainant and the accused had family relations, and that, the accused from time to time used to take hand loans from the complainant. The complainant had advanced an amount of Rs.2,50,000/- to the accused as hand loan for the

repayment of which the accused issued a cheque in the sum of Rs.2,50,000/- dated 22nd September 2012. The said cheque was dishonoured for want of sufficient funds in the account of the accused, and since the amount of the said cheque was not paid inspite of a notice, the complaint had been filed.

5 The accused examined himself as a witness during the trial.

6 The Magistrate observed, among other things, that the accused had made a report against one Nandkumar Kulkarni – husband of the complainant, on 20th May 2012 and 25th May 2012. The Magistrate observed that on the basis of these reports lodged by the accused, a case in respect of offences punishable under Sections 420, 467, 468, 471 of the Indian Penal Code and the offence punishable under Section 25 of the Arms Act, was registered against the husband of the complainant. The Magistrate also observed that the complainant had offered herself as a surety for her husband in the said case. After observing this

aspect of the matter, the learned Magistrate doubted whether, under these circumstances, the accused was likely to issue a cheque on 22nd September 2012 to the complainant. The Magistrate observed that after the accused had set the criminal law in motion against the husband of the complainant, it was highly unlikely that he would give a cheque to the complainant, after about four months therefrom. The Magistrate, therefore, observed that the claim of the accused that the cheque in question had been given for some other transaction in June 2010 itself, was possible.

7 The doubt felt by the Magistrate, about the truth of the complainant's version, appears to be proper.

8 No case for grant of leave is made out.

9 Leave refused.

10 The application is rejected.

(ABHAY M. THIPSAY, J.)