

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.130 OF 2013**

**CHANDRAKANT BAMA PATIL**

**)...APPLICANT**

**V/s.**

**RAJENDRA GOTIRAM DESHMUKH & ANR. )...RESPONDENTS**

Mr.E.R.Naik, Advocate for the Applicant.

Mr.J.M.Puranik, Advocate for Respondent No.1.

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

**CORAM : ABHAY M. THIPSAY, J.**

**DATE : 2<sup>nd</sup> FEBRUARY, 2015.**

**P.C. :**

1           The applicant is the original complainant. He had prosecuted respondent no.1 on the allegation of having committed the offence punishable under Section 138 of the Negotiable Instruments Act. The learned Judicial Magistrate, First Class, Kalyan, after holding a trial, found respondent no.1 not guilty, and

passed an order of acquittal. Being aggrieved thereby, the applicant has approached this court, and is, by the present application, seeking special leave to appeal from the said judgment and order of acquittal.

2           I have heard Mr.E.R.Naik, the learned counsel for the applicant. I have heard Mr.J.M.Puranik, the learned counsel for respondent no.1. For the sake of convenience and clarity, the applicant shall hereinafter be referred to as 'the complainant' and respondent no.1 as 'the accused.'

3           Mr.Naik submitted that, he would seek only a limited relief from the court to the extent of remand of the matter back to the learned Magistrate, with a direction to permit the applicant, i.e., the original complainant, to adduce further evidence. I have, therefore, examined the matter from this limited point of view.

4           The case of the complainant was that, he had given a hand loan of Rs.7 Lac to the accused. In repayment of it, the

accused had issued the cheque in question. The hand loan was supposed to have been given by cash. This aspect of the matter was disbelieved by the Magistrate, who refused to accept that the cheque in question had been issued in discharge of a legally enforceable debt or other liability. It is, in view of this finding, that the Magistrate acquitted the accused.

5           The learned counsel for the complainant submits that the amount of hand loan was given by the complainant to the accused from time to time in cash, in the presence of different witnesses. He submits that, the names of these witnesses are found in the list of witnesses, annexed to the complaint.

6           The learned counsel for the accused submitted that, the complainant had himself closed the case before the trial court. He had not expressed any desire to examine all these witnesses. On specifically questioning, the learned counsel for the applicant admits that the complainant has not mentioned, either in the complaint or in his evidence, that the hand loan was advanced by

him to the accused in the presence of certain witnesses. There is, also, no explanation, as to why these witnesses were not examined earlier.

7           That the decision of the Magistrate, on the basis of the evidence that was adduced, is wrong or improper, is not the argument, but all that is sought for is permitting further evidence to be adduced. Since there is nothing to show that the hand loan was given in the presence of certain persons, and since the learned counsel for the applicant is unable to explain as to why, if that was so, the said persons were not examined during the trial, I do not think it fit to grant leave to appeal.

8           Leave refused.

9           The application is rejected.

**(ABHAY M. THIPSAY, J.)**