

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 150 OF 2015

Raghunath Vitthal Wadikar .. Applicant

v/s.

Bandu Kashinath Bavage ..Respondent

Mrs. Vallari Jadhav i/b D.V. Sutar for the applicant
Mr. H.J. Dedhia, APP for respondent State

**CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED: 23rd OCTOBER, 2015.**

PC.

1. This is an application filed under Section 378 (4) of the Cr. PC.. The applicant herein is the complainant in S.C.C. No.1509 of 2011 filed in the Court of the learned J.M.F.C. Aakurdi, Pune. The applicant complainant had lodged a complaint under Section 138 of the N.I. Act against the respondent no.1, alleging that he had advanced to the respondent no.1 loan of Rs.52,000/-. The applicant complainant had claimed that the respondent accused had issued to him a cheque dated 15.01.2006 towards return of the loan amount. The said cheque was presented in the bank but

was dishonoured on 18.01.2006 with an endorsement “not arranged for”. The applicant complainant issued statutory notice to the respondent no.1 accused on 03.02.2006. The respondent no.1 accused did not repay the amount despite having receipt of the notice. Hence, applicant had lodged a complaint against the respondent no.1 accused under Section 138 of the N.I. Act.

2. Upon being served with summons, the respondent no.1 accused put in his appearance, pleaded not guilty and claimed to be tried. The respondent no.1 accused admitted having signed the cheque. The respondent no.1 had however, denied having issued the cheque of Rs.52,000/-. Respondent no.1 had stated that he had take loan of Rs.10,000/- and that he had given a blank cheque to the applicant complainant, in respect of the said loan amount of Rs.10,000/- . He had stated that he had paid money of Rs.10,000/- however, the complainant had not returned the same. Upon considering the evidence adduced by the complainant and the defence raised by the accused, the learned Magistrate held

that the defence raised by the accused was probable and therefore, dismissed the complaint under Section 138 of the N.I. Act.

3. Aggrieved by the said order, the complainant had preferred this application.

4. I have gone through the records which have been placed on record. At the outset, it may be mentioned that in the case of ***Ghurey Lal Vs. State of Uttar Pradesh (2008) 10 SCC 450*** the Hon'ble the Supreme Court has reiterated that the Appellate Court in dealing with the case in which the Trial Courts have acquitted the accused should bear in mind that the Trial Court's acquittal bolsters the presumption that he is innocent. The Appellate court must give due weight and consideration to the decision of the Trial Court as the Trial Court had the distinct advantage of watching the demeanour of the witnesses, and was in a better position to evaluate the credibility of the witnesses. It is, therefore, well settled that the appellate Court should not lightly disturb the order

of acquittal, unless the order is patently illegal and perverse.

5. Reverting to the facts of the present case, the applicant complainant had claimed that he had advanced to the accused loan of Rs.52,000/-. The records reveal that the applicant complainant had paid to the accused amount of Rs.15,000/- by cheque. The learned Magistrate has taken into consideration the fact that sum of Rs.1,89,022/- was balance in the account of the complainant despite which, the complainant has claimed that he had borrowed a sum of Rs.20,000/- from his friend Vishnu Dixit, to be paid to the respondent no.1 accused. The applicant respondent had not assigned any reasons for borrowing the money from his friend Vishnu Dixit despite having sufficient amount to his credit in his bank account. The applicant complainant had also not examined the said witnesses to support his contention that he had borrowed the money from him to pay to the respondent no.1 accused. Apart from the bare statement of the complainant there is no material to prove that he had paid

Rs.20,000/- by cash. The applicant complainant had claimed that the accused had issued to him a receipt having received an amount of Rs.52,000/-. The applicant complainant however failed to produce the said receipt before the learned Magistrate and the failure to produce the receipt warrants drawing of adverse inference.

6. The aforesaid facts and circumstances were sufficient to rebut the presumption arising from Section 139 of the N.I. Act. The defence raised by the respondent accused was probable. The judgment is neither illegal nor perverse and hence, it does not warrant any inference.

7. Therefore, the application for leave to appeal is rejected.

(ANUJA PRABHUDESSAI, J.)