

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO. 178 OF 2014**

Pallavi Deepak Limje

.. Applicant

Versus

Sapna Chandrashekhar Harkut and Ors.

.. Respondents

Mr. Manish Bohra, Advocate for Applicant.

Mrs. M.R. Tidke, APP for State.

CORAM : ABHAY M. THIPSAY, J.**DATED : 6th JANUARY, 2015.**

P.C. :

1. Applicant had filed a case against the Respondent No.1 alleging commission of an offence punishable under Section 138 of the Negotiable Instruments Act. The applicant is aggrieved by the order of acquittal and has approached this Court seeking leave to appeal against the judgment of acquittal recorded by the learned Judicial Magistrate First Class, Nashik.

2. I have gone through the copies/notes of the evidence which are annexed to the application. It is clear from the judgment that the Magistrate was unable to hold that the cheque in question had been drawn or signed, the respondent. It appears that the respondent's defence witness i.e. the Branch Manager of the Nashik Merchants Bank on which the cheque in question was drawn, stated before the Court that the account in question was a joint account operated jointly by respondent and her husband. He further deposed before the Magistrate that the signature on cheque in question was not of the Respondent No.1 but that of her husband.

3. In view of this, the conclusion arrived by the Magistrate that the cheque in question had not been drawn or signed by Respondent No.1 cannot be faulted.

4. The learned Counsel for the applicant submits that the Respondent No.1 had signed the cheque in the presence of the applicant and that the possibility of the Respondent No.1 and her husband having conspired to deceive and cheat the applicant cannot be ruled out. It is submitted that the Respondent No.1 could easily forge a signature which could be opined to be of her husband, by the banker.

5. Though there is some substance in this contention, on this basis, there does not appear to be any possibility of the acquittal of the Respondent No.1 with respect to the offence punishable under Section 138 of the Negotiable Instruments Act being set aside, in the event of leave to file an appeal being granted. If the Respondent No.1 and her husband have deceived the applicant, the applicant would have an appropriate legal remedy in that regard. If the applicant can make out a case of cheating against Respondent No.1 and/or her husband, he can prosecute the Respondent No.1 and/or her husband, in that connection. The fact however remains that the acquittal of the Respondent No.1 with respect to the offence punishable under Section 138 of the Negotiable Instruments Act does not appear to be illegal or improper.

5. Leave refused.

6. Application rejected.

(ABHAY M.THIPSAY, J)