

leave to appeal was decided after hearing the learned counsel for the respondent No.1 i.e. the original accused, who was present and after going through the impugned Judgment. Now, by the present application, it is prayed that the order of refusing the leave and rejecting the application for leave to appeal be recalled and the matter be heard afresh.

3. Perusal of the order rejecting the application for leave to appeal indicates that it was not passed simplicitor on default of the applicant in the application. The order indicates that the impugned Judgment was examined and on being found that the reasons, which led the Magistrate to doubt the truth of the applicant's case, were not suffering from any error or infirmity, the application came to be rejected. It is, however, true that the application came to be rejected without hearing the applicant.

4. Though the power to 'recall' an order is recognized and is held to be distinct from the power to 'review', which is barred by Section 362 of the Code of Criminal Procedure; it is extremely doubtful whether such power should be exercised only because the order sought to be recalled was passed without hearing the applicant and/or his counsel. It is not that the matter was wrongly listed on board, when it came to be decided by the order sought to be recalled. Anyway, under the circumstances, I have permitted the learned counsel for the applicant to make his submissions

regarding the merits of the matter, so that the question of recalling the order dated 19/01/2015, refusing leave to appeal, can be considered in proper perspective.

5. However, the learned counsel for the applicant is unable to point out how the reasoning of the Magistrate, in coming to the conclusion that, the present applicant's case was not satisfactorily proved, is incorrect. From the arguments advanced, it appears that the applicant had filed three cases against the respondent No.1 herein in respect of offences punishable under Section 138 of the Negotiable Instruments Act, 1881, based on three different cheques. The total amount of all these three cheques came to Rs.20,00,000/-. The transaction was said to be a transaction of friendly loan. This loan of Rs.20,00,000/- was said to have been given in cash on various different dates. No acknowledgment or receipt in respect of having advanced the cash amount was taken. The precise dates on which the loan was advanced have not been mentioned in any of the cases. The Income Tax returns filed by the applicant during the trial indicated his gross income during the relevant period to be annually Rs.2,00,000/-.

6. The learned counsel for the applicant submits before me that the amount of Rs.20,00,000/-, which was lent by the applicant to the respondent No.1, had been borrowed by the

applicant from his friends. Those friends had also advanced the amount to the applicant by way of a 'friendly loan'. Those friends had also not taken any acknowledgment of having advanced the loan amount from the applicant. None of the said friends were examined as witness/witnesses before the Magistrate during the trial.

7. It has already been observed that the reasoning on which the Magistrate doubted the truth of the applicant's case, does not appear to suffer from any error or infirmity. As already observed, in any case, the view of the matter as taken by the Magistrate is *a possible view* of the matter.

8. No failure of justice has been occasioned by the order dated 19/01/2015 and, as such, there is no case for recalling the same. Even after giving an opportunity of being heard, Mr.Munghate is unable to show how the reasoning of the Magistrate is erroneous.

9. At this stage, Mr.Munghate submits that he is relying on three decisions of the Supreme Court and submits that, that they have been relied upon, be recorded in the present order. He relies on the following decisions :

- 1) **State of Rajasthan v. Sohan Lal & Ors.,
2004 CRI.L.J. 3842;**

- 2) **Jawahar Lal Singh v. Naresh Singh & Ors.,
AIR 1987 SC 724;**
- 3) **State of Haryana v. Surjit Singh,
AIR 2009 SC 1480.**

10. I have been taken through the observations made by the Lordships of the Supreme Court in these Judgments. I do not think that in this case there is any necessity of writing any elaborate order, as the Judgment delivered by the Magistrate is elaborate, well reasoned and the learned counsel is unable to deal with the reasoning of the Magistrate.

11. The application for recalling the order is rejected.

(ABHAY M. THIPSAY J.)