

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.232 OF 2014

MR.SURESH HARI JADHAV

)...APPLICANT

V/s.

RAMAKANT RAMCHANDRA GHADI & ANR.)...RESPONDENTS

Ms.Sandhya Mailagir h/f. Mr.Anil D. Joshi, Advocate for the Applicant.

Mrs.M.R.Tidke, APP for the Respondent - State.

CORAM : ABHAY M. THIPSAY, J.

DATE : 2nd MARCH 2015.

P.C. :

1 The applicant had prosecuted respondent no.1 on the allegation of his having committed an offence punishable under Section 138 of the Negotiable Instruments Act. The Judicial Magistrate First Class, Thane, after holding a trial, found respondent no.1 not guilty, and passed an order of acquittal. The

applicant is aggrieved by the said order of acquittal. He is, therefore, by the present application, seeking special leave to file appeal therefrom.

2 I have heard Ms.Sandhya Mailagir, the learned counsel for the applicant, in support of the application. With his assistance, I have gone through the application and the annexures thereto.

3 For the sake of convenience and clarity, the applicant shall hereinafter be referred to as 'the complainant' and the respondent no.2 as 'the accused.'

4 The cheque in question was of Rs.57,000/-. The case of the complainant was that the accused wanted that amount for the renovation of his house and that, considering the friendly relations, the complainant had advanced the sum of Rs.57,000/- in cash to the accused. This had happened in June 2011. That, at that time itself, the accused had handed over the cheque in

question to the complainant, dated 15th January 2012 in the sum of Rs.57,000/-, which was dishonoured, and which was the subject matter of the prosecution. It transpired during the trial that the complainant had earlier given a demand notice claiming that the complainant had given an amount of Rs.1,30,000/- to the accused on 1st April 2009. The complainant, in the cross-examination, came with a version that, that an amount of Rs.1,30,000/- was given to the accused for repairing his house, was true, but that since an amount of Rs.73,000/- had been received back from the accused, the cheque had been issued in respect of the balance amount.

5 Based on this, the Magistrate observed that the story of the complainant, of the accused having taken a hand loan of Rs.57,000/- was falsified.

6 Though the entire reasoning of the learned Magistrate may not be accepted, it is a fact that the complainant had come up with a specific transaction in the complaint, but the transaction

turned out to be something else. Under these circumstances, the doubt felt by the Magistrate cannot be said to be improper and appears quite reasonable.

7 The view of the matter, as taken by the Magistrate, is a possible view. It is well settled that when such is the position, grant of leave would be futile.

8 Leave refused.

9 The application is rejected.

(ABHAY M. THIPSAY, J.)