

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

APPLICATION FOR LEAVE TO APPEAL (PVT) NO.244 OF 2014

Dhanraj Shobhachand Sakhariya ... **Applicant**
V/s.
Dheeraj Devraj Punamiya & Ors. ... **Respondents**

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Mr.Nitin Deshpande, Advocate for the Applicant.
Mr.Deepak Thakre, APP for the Respondent/State.

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CORAM : ABHAY M. THIPSAY J.

DATED : 30TH JANUARY, 2015

P.C.

1. The applicant is the original complainant. He had filed a complaint against respondent No.1 herein alleging commission of an offence punishable under Section 138 of the Negotiable Instruments Act. The Judicial Magistrate, First Class, Pune, after holding a trial, acquitted the respondent No.1. The applicant is aggrieved by the said order of acquittal and is, by the present application, seeking leave to appeal against the same.

2. I have heard Mr.Deshpande, the learned counsel for the applicant. With his assistance, I have gone through the application and the annexures thereto which include a copy of the

complaint, notes of evidence adduced during the trial and a copy of the impugned judgment.

3. For the sake of convenience and clarity, the appellant shall, hereinafter, be referred to as “the complainant” and the respondent No.1 as “the accused”.

4. The case of the complainant is that the accused is a dealer in gold. The complainant is a jeweller and that, therefore, the complainant and accused got acquainted. That, the complainant needed money due to the financial difficulties and therefore, the complainant gave gold ornaments worth Rs. 10,00,000/- to the accused for getting it sold in the shop of the accused. The accused then issued ten cheques of different dates each in the sum of Rs.1,00,000/- in favour of the complainant. When these cheques were deposited, they bounced; and in spite of making a demand in respect of the amount of cheques, the amount were not paid. This resulted in filing of different complaints in respect of the offence punishable under Section 138 of the Negotiable Instruments Act by the complainant against the accused. The present case was in respect of one such cheque.

5. The learned Magistrate doubted the version of the complainant due to the following reasons :

(a) The Magistrate observed that the complainant himself

is a jeweler and if he wanted to have the ornaments sold, he could have sold the same in his own shop.

- (b) The complainant did not disclose the date on which he has handed over gold ornaments worth Rs. 10,00,000/- to the accused for being sold.
- (c) The complainant did not disclose the description and weight of those ornaments, either in the complaint, or in his evidence.
- (d) The complainant did not obtain any receipt from the accused for having received the said ornaments.
- (e) The complainant did not disclose as to what was his financial crisis, when he is a jeweler and runs a jewelery shop since last 30 years in a prime location at Pune.
- (f) Though, according to the complainant, accused is an employee with Arihant Jewelers and not the owner thereof and that, according to the complainant, accused runs a shop of Imitation Jewellery, the complainant handed over his gold ornaments to the accused for being sold in the shop of the accused, which is not believable.

6. The learned counsel for the complainant is unable to clarify these aspects of the matter even before this Court.

7. The doubt entertained by the Magistrate, about the truth of the complainant's version, was certainly reasonable. In any case, the view of the matter as taken by the Magistrate is, certainly, a possible view. It is well settled that in such a situation, grant of leave would be futile.

8. Leave refused.

9. The application is rejected.

(ABHAY M. THIPSAY J.)