

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.307 OF 2013

SHRI LALJI R. YADAV (since deceased))
Through Legal representatives)
SMT.NAVRANGI LALJI YADAV & ANR.)...APPLICANTS

V/s.

KAMLESH UKABHAI JADHAV & ANR.)...RESPONDENTS

Ms.Anusha Amin i/b. Mr.Prashant Jadhav, Advocate for the Applicant.

Ms.Kalpna Kanhere, Advocate for Respondent No.1.

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

CORAM : ABHAY M. THIPSAY, J.

DATE : 2nd FEBRUARY, 2015.

P.C. :

1 The applicant had prosecuted respondent no.1 on the
allegation of his having committed the offence punishable under
Section 138 of the Negotiable Instruments Act. The learned

Judicial Magistrate, First Class, Thane, after holding a trial, acquitted respondent no.1. The applicant is aggrieved by the said order of acquittal. He, therefore, by the present application, seeks special leave to appeal from the said order of acquittal.

2 I have heard Ms.Anusha Amin, the learned counsel for the applicant. I have heard Ms.Kalpana Kanhere, the learned counsel for respondent no.1. For the sake of convenience and clarity, the applicant shall hereinafter be referred to as 'the complainant' and respondent no.1 as 'the accused.'

3 The case of the complainant, as made out from the complaint, was to the effect that, the complainant and the accused entered into an agreement to sale a certain property. The complainant was supposed to sell the property to the accused and the accused had issued the cheque in question towards the payment of the amount of consideration. That, the cheque was dishonoured with the remark 'Payment stopped by drawer' and since, inspite of giving notice demanding the amount of the said

cheque, it was not paid, the accused was prosecuted. The defence of the accused taken during the trial was that, the complainant had failed to fulfill his obligation under the contract, and that, as a matter of fact, the complainant himself had terminated the agreement. It was stated that the complainant was unable to deliver clear and marketable title to the accused, and that, therefore, the complainant was not entitled to receive any money from the accused. As a matter of fact, it was stated that the agreement between the complainant and the accused itself indicated that, it is only in the event of complainant being able to transfer a clear and marketable title to the accused, that the accused would be liable to pay the amount in question.

4 The Magistrate, upon considering the evidence adduced before him, concluded that as the complainant himself had stated that the agreement between him and the accused was terminated, there was no question of the accused being liable to pay the amount of consideration, as mentioned in the agreement. The Magistrate held that the complainant had failed to prove that

the cheque in question had been issued in discharge of a legally enforceable liability, which was existing at the material time.

5 The view of the matter, as taken by the Magistrate, cannot be said to be unreasonable or contrary to law. In any case, it is certainly a possible view of the matter.

6 It is well settled that when such is the case, grant of leave would be futile.

7 Leave refused.

8 The application is rejected.

(ABHAY M. THIPSAY, J.)