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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No. 360 of 2013

Haribhav Annaji Patil ..Applicant.
Versus
Dipak Maruti Kshirsagar and others ..Respondents.

Mr Umesh R. Mankapure, Advocate for the Applicant.
Mrs Anamika Malhotra, APP for the State.
Mr P.P. Jadhav for the respondent.

CORAM : A.R.JOSHI,J
DATED : 10th August, 2015

P.C. :

1. Heard rival submissions on this application for leave to file appeal challenging the acquittal of the respondent no.1 in the matter of offence punishable under section 138 of the Negotiable Instruments Act.

2. The case of the complainant/present applicant is that he had given a friendly loan to the respondent-accused to the tune of Rs.3 lakhs for the purpose of helping the respondent no.1 to clear his bank loan. It is also the case of the complainant that the respondent no.1 acknowledged receipt of said amount of Rs. 3 lakhs by giving three receipts of Rs. 1 lakh each to the complainant. It is also the case of the complainant that in satisfaction of one of these receipts, the respondent-accused gave him cheque. Said cheque was dishonoured when presented to the bank.

3. The trial Court ascertained that the present applicant failed to establish that three receipts of Rs.1 lakh each were given in his favour by the accused, acknowledging the indebtedness to the tune of Rs.3 lakhs. The trial Court also came to the conclusion that the complainant also failed to establish his own case that he had a fixed deposit receipt with the same bank and after getting the amount before maturity, he withdrew

the amount of fixed deposit and repaid the amount of Rs.2,98,000/- to the bank towards satisfaction of the hypothecation loan of the accused. Though the receipt was produced before the trial Court, said receipt only showed deposit of Rs.2,98,000/- in the hypothecation account of the accused. Simplicitor said receipt cannot be taken as a proof that the applicant deposited that amount with the bank. This is more so, in view of absence from any officer from the concerned bank to show that the said amount was deposited by the complainant to satisfy the loan account of the accused. Even there was nothing brought before the trial Court that any fixed deposit and also to the extent of Rs.2,98,000/- was in the name of the complainant with the bank.

4. Apart from examining himself the complainant did not examine any other witness. Though the accused did not enter into the defence by examining him or any other witness, the trial Court ascertained the case of the complainant on his own submission and found out that the complainant failed to establish payment of Rs. 3 lakhs by him to the accused. As such trial Court came to the conclusion that by way of his own evidence intrinsically the complainant had failed to establish the legally enforceable liability of the respondent no.1.

5. Considering these facts and the admissions given by the complainant in his cross-examination, in the opinion of this Court, this is not a case in which it may be said that the trial Court came to an erroneous conclusion and it cannot be said that the order of the trial Court is perverse. As such, there is nothing to entertain the present application for leave to file appeal and same is accordingly dismissed and disposed of.

(A.R.JOSHI, J.)