

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

APPLICATION FOR LEAVE TO APPEAL (PVT) NO.374 OF 2013

Sou. Vijaya Praksh Shete ... **Applicant**

V/s.

Shri. Dattatraya Bhimjaji Yelwande & Anr. ... **Respondents**

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Mr.Vilas Tapkir, Advocate for the Applicant.

Mr.Satyavrat Joshi, Advocate for the Respondent No.1.

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

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CORAM : ABHAY M. THIPSAY J.

DATED : 6TH FEBRUARY, 2015

P.C.

1. The applicant had prosecuted the respondent No.1 on the allegation of having committed an offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The Judicial Magistrate, First Class, Bhore, after holding a trial, passed an order of acquittal. The applicant is aggrieved by the said order of acquittal and is, by the present application, seeking special leave of this Court to file an appeal therefrom.

2. I have heard Mr.Vilas Tapkir, the learned counsel for the applicant. I have heard Mr.Satyavrat Joshi, the learned counsel for the respondent No.1.

3. For the sake of convenience and clarity, the applicant shall be hereinafter referred to as 'the complainant', while the respondent No.1 as 'the accused'.

4. The complainant and the accused are related to each other. The complainant is the married sister of the accused. According to the complainant, the accused had some financial difficulties and therefore, to satisfy his need, the complainant paid an amount of Rs.3,00,000/- in cash to him. In repayment thereof, the accused issued a cheque in the sum of Rs.3,00,000/- to the complainant, which was dishonoured and led to the prosecution.

5. The complainant examined herself during the trial. The accused also examined himself in defence.

6. With the assistance of the learned counsel for the parties, I have gone through the application and the annexures thereto, which include a copy of the complaint and notes of evidence adduced during the trial.

7. The Magistrate observed that there was some civil dispute between the complainant and the accused. It appears that initially, in the year 2007 and later in the year 2010, the complainant had sent a notice through her advocate to the accused claiming that she was not given her share in a certain

house property, which was jointly owned by the complainant, the accused and others. The Magistrate, therefore, doubted the likelihood of the complainant having given financial assistance to the accused, in these circumstances. The Magistrate also observed that the accused had given two cheques to the son of the complainant, which were duly encashed. These cheques were for Rs.10,000/- and for Rs.5,000/-. The Magistrate noted the defence of the accused that 'in order to assist the son of the complainant, who wanted financial help for his business, the accused had given three blank cheques to the complainant's son' and 'that one of the said three blank cheques had been misused by the complainant for filing the prosecution against the accused.'

8. In the context of this defence, I have examined the evidence adduced. It was put to the complainant in the cross-examination that the matter on the cheque, except the signature, was not written by the accused. Though this has been denied by the complainant, in paragraph Nos.16 of the impugned Judgment the Magistrate has observed that there was visible differences in the handwriting and the ink of the signature of the said cheque and the other matter thereon. The Magistrate, therefore, accepted the possibility of a blank cheque having been given, as reasonable.

9. It cannot be said that the doubts about the truth of the complainant's case, as felt by the Magistrate was unreasonable, or did not arise out of evidence that was adduced before him.

10. It is settled legal position that while considering the question of granting special leave to appeal, the principles, on which an order of acquittal liable to be interfered with, need to be kept in mind. It is well settled that if two views of the evidence adduced before the trial Court are possible and if the trial Court has taken one of such views leading to acquittal, the appellate Court would not interfere with such an order of acquittal.

11. Since the view of the evidence as taken by the Magistrate is a possible view, grant of leave would be futile.

12. Leave refused.

13. The application is rejected.

(ABHAY M. THIPSAY J.)