

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.377 OF 2013

**RAJGAD SAHAKARI SAKHAR KARKHANA)
LIMITED)...APPLICANT**

V/s.

SHRI DILIP RAMCHANDRA YADAV & ANR.)...RESPONDENTS

Mr.Vilas B. Tapkir, Advocate for the Applicant.

Ms.S.S.Kaushik, APP for the Respondent - State.

CORAM : ABHAY M. THIPSAY, J.

DATE : 30th JANUARY, 2015.

P.C. :

1 Heard Mr.Vilas Tapkir, the learned counsel for the applicant.

2 The applicant *Rajgad Sahakari Sakhar Karkhana* had prosecuted the respondent no.1 herein, on the allegation that the respondent no.1 had committed an offence punishable under

Section 138 of the Negotiable Instruments Act. The learned Judicial Magistrate First Class, after holding a trial, held that the case against the respondent no.1 had not been proved and passed an order of acquittal. The applicant is aggrieved by the said order of acquittal, and he is, by the present application, seeking special leave to file an appeal therefrom.

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

4 The case of the complainant, as put forth before the Magistrate, was that, the accused is a contractor in respect of the cutting and transport of the sugarcane. That, the accused had been given an advance by the complainant, so as to enable the accused to meet the expenses, which he would be required to bear towards the fulfillment of his contractual obligation. That, the accused, however, did not perform his part of the contract, and therefore, returned a part of the amount which he had taken as

advance from the complainant by a cheque. This cheque dishonoured, and since the amount thereof was not paid inspite of a demand notice, the accused was prosecuted.

5 Thus, the case of the complainant was that, the accused had given the cheque in question for repayment of the advance, that had been taken by him, as the accused did not perform his part of the contract, and was thus liable to refund the amount of advance. He purported to do so, by giving the cheque in question.

6 The defence of the accused was that, the complainant had obtained a blank signed cheque, as and by way of security, at the time of entering into the contract itself. The case of the accused was that, the complainant had arbitrarily filled in some amount in the cheque, and that, the accused was not liable to pay that amount.

7 The learned Magistrate observed that, the complainant had not established satisfactorily that on the given date, the amount mentioned in the cheque was due and payable by the accused to the complainant. The Magistrate found the defence of the accused, namely, that 'a blank cheque had been obtained by the complainant from him' probable. The Magistrate, in that regard, observed that, the writing on the cheque appeared similar to the writing of the complainant's witness. The Magistrate also observed that there was no satisfactory evidence that the notice of demand was served upon the accused. The relevant discussion finds place in paragraph 12 of the impugned judgment.

8 The Magistrate, ultimately, concluded that, the amount in the cheque did not tally with the amount reflected in the extract of the account of the accused, as brought before the court. The Magistrate observed that the complainant was suppressing certain aspects of the matter from the court. The Magistrate, therefore, concluded that, it was not possible to hold that on the given date the accused was liable to pay the amount mentioned in the cheque to the complainant.

9 The doubt felt by the Magistrate about the truth of the complainant's case appears to be justified. In any case, the view of the matter, as taken by the Magistrate, is certainly, a possible view. It is well settled that, when such is the case, grant of leave would be futile.

10 Leave refused.

11 The application is rejected.

(ABHAY M. THIPSAY, J.)