

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.364 OF 2015

Shri Balvirsingh Khalasa

...Applicant

Versus

Vinu Harminder Singh Arora & Anr.

...Respondents

.....

Mr. Kuldeep S. Patil for the Applicant.

Smt. A.S. Pai for Respondent No.2- State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE :5th OCTOBER, 2015.

P. C. :

This is an application under section 378 (4) of Criminal Procedure Code for leave to appeal against the judgment dated 22nd June, 2015 in Criminal Case No.3091 of 2012 whereby the learned Judicial Magistrate, First Class, Panvel, has acquitted the Respondent No.1-accused of offence under section 138 of the Negotiable Instruments Act.

2. The Applicant herein was the complainant in Summary Criminal Case No.3091 of 2012 on the file of the learned Judicial Magistrate, First Class, Panvel. The case of the Applicant-complainant

was that he had advanced to the Respondent No.1-accused an amount of Rs.3,49,000/- by way of handloan for purchase of a flat. The Applicant-complainant had stated that the Respondent No.1-accused had issued total seven cheques (details of which are given in para 1 of the complaint) towards the repayment of the said loan. One of the cheques No.601519 dated 21st September, 2012 for Rs.50,000/-, the subject matter of the said C.C. No.3091 of 2012, was deposited in the Bank on 21.9.2012 and the same was dishonoured for insufficient funds. The Applicant-complainant had issued statutory notice on 9th October, 2012. Despite receipt of the statutory notice, the Respondent No.1-accused did not repay the loan amount. The Applicant-complainant therefore, filed the complaint under section 138 of the Negotiable Instruments Act.

2. Upon receipt of the summons the Respondent No.1-accused put in his appearance. The Respondent No.1-accused had stated that she alongwith the Applicant-complainant and her brothers was running a money raising scheme which in local terms is known as “*Bhishi*”. The defence of the Respondent No.1-accused was that the subject cheque was collected from her as security of the said fund. The learned Magistrate upon considering the evidence adduced by the respective

parties, accepted the defence and observed that the cheque was not issued towards the legally enforceable debt.

3. With the assistance of the learned counsel for the Applicant Shri Patil, I have gone through the impugned order as well as the notes of evidence placed before me. It is to be noted that the Applicant-complainant had come with a specific case that he had given to the Respondent No.1- accused a loan of Rs.3,49,000/- and that cheque dated 21st September, 2012 for Rs.50,000/- was issued towards part payment of the said loan. It is pertinent to note that the Applicant-complainant had not given any details of the said transaction including the date on which the said loan was advanced. It is also not disputed that the Applicant has also not entered into any written document in respect of said loan transaction. Hence, the learned Magistrate was justified in holding that there is no material to prove that the Applicant-Complainant had advanced loan of Rs.3,49,000/- and that the subject cheque was issued towards the repayment of the said loan.

4. The evidence adduced by the Respondent No.1-accused reveals that she alongwith the Applicant-complainant Balvirsingh Khalasa and his brothers and 20 other members were contributing

Rs.5,000/- p.m. towards “Bhishi”, a fund raising scheme and that the members had issued cheques as security towards the said fund raising scheme. She had specifically stated that the subject cheque was issued as a security of the said fund raising scheme and the Applicant-complainant had misused the same.

5. The Applicant-complainant had admitted in his evidence that he alongwith his brothers are the members of the “Bhishi” between the year 2008-2012. The said statement, specifically in view of the fact that there is no evidence as regards advancing loan of Rs.3,49,000/-, probablises the defence taken by the Respondent No.1-accused. In my considered view the findings rendered by the learned Trial Judge are neither illegal nor perverse. The view taken by the learned Magistrate is probable and does not warrant interference. Hence, the application is dismissed. The Leave is rejected.

(ANUJA PRABHUDESSAI, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed
Judgment /order.