IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION [ALP] NO.464 OF 2013

Nagesh Shankar Mane ..Applicant
Versus
Damayanti Shamrao Jedhe (Deshmukh)
and Anr. ..Respondents

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Mr. Sandeep Velkar a/w. Reshma Kurle, Mr. Rushabh Sheth i/.b. Bodhanwala & Co. for the Applicant.
Mrs. Anamika Malhotra, APP, for the Respondent-State.
Mr. N.A. Mogre i/b. R.G. Shinde, for Respondent No.1.

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CORAM : A. R. JOSHI, J.
DATE : 17th JULY, 2015

P.C.

1. Heard rival arguments on this application for leave to file appeal challenging the acquittal of the respondent in the matter of offence punishable under Section 138 of Negotiable Instruments Act.

2. The original complaint was filed by the applicant/appellant on the premise that the respondent/accused had obtained a hand-loan of Rs.4 Lakh to be paid withins a span of 15 days in two installments. However, as the repayment was not made, the respondent/accused gave a cheque for Rs.4 Lakh. The cheque was dishonored for 'insufficient funds' and hence after issuance of notice the complaint was lodged.

3. The defence of the respondent/accused is that she had never taken a loan from the complainant but her son-in-law had such transaction with the complainant for Rs.4 Lakhs and she had given a blank cheque with her signature as and by way of security to said loan. It is further the defence of the respondent that said loan taken by her son-in-law was fully repaid and as such there is no liability for her to pay any amount under the cheque which was allegedly given by way of security.

4. It appears that the trial Court was influenced by some admission given by the applicant in his cross-examination to the effect that the son-in-law of the respondent had paid back Rs.1,50,000/-. There is another evidence of the complainant to the effect that according to him it was true that in the complaint lodged by the son-in-law with the police he had mentioned that he had repaid an amount of Rs.2.5 Lakhs. After this evidence apparently the complainant has stated that said son-in-law had paid back Rs.1,50,000/-. By taking this the trial Court ascertained that the entire liability of Rs.4 Lakhs for the loan taken by the son-in-law of the respondent was satisfied and as such no cause of action for the complainant and as such the Court passed the order of acquittal. Admittedly in the complaint

lodged with the police by son-in-law of the respondent/accused there is only mention of giving of a cheque by way of security by the accused and there is no mention of any cheque number, amount or date. Even the accused did not examine herself but evidence on her behalf was given by her son-in-law. Once there is an admission by the respondent as to giving of a cheque presumably according to her by way of security and considering the case of the applicant that he had given a loan to the respondent herself, in the opinion of this Court there is a debatable issue to be dealt in detail mainly on the aspect whether by the evidence adduced before the Court it was established that the loan of Rs.4 Lakhs allegedly taken by the son-in-law of the respondent has been repaid back to the complainant when the specific case of the complainant is that of denial of any such transaction as to giving a loan to the son-in-law. In that view of the matter, present application is allowed. Appeal is admitted. Process under Section 390 of Cr.P.C. be issued against respondent No.1 with directions to the trial Court to release her on bail in the sum of Rs.500/-. Call for R & P.

(A. R. JOSHI, J.)

Deshmane (PS)