

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1315 OF 2012

SATYANARAYAN BHAGATRAM AGARWAL)...APPLICANT

V/s.

**VISHWANATH alias RAJAN PANDURANG)
GADGIL AND ANR.)...RESPONDENTS**

Mr.Rohan Nahar, Advocate for the Appellant.

Mr.M.M.Gadkari, Advocate for Respondent No.1.

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

CORAM : ABHAY M. THIPSAY, J.

DATE : 2nd MARCH 2015.

P.C. :

1 The applicant had prosecuted respondent no.1 on the allegation of his having committed an offence punishable under Section 138 of the Negotiable Instruments Act. The Judicial Magistrate First Class, Pune, after holding a trial, found

respondent no.1 not guilty, and passed an order of acquittal. The applicant is aggrieved by the said order of acquittal. He is, therefore, by the present application, seeking special leave to file appeal therefrom.

2 I have heard Mr.Rohan Nahar, the learned counsel for the applicant, and Mr.M.M.Gadkari, the learned counsel for respondent no.1. With their assistance, I have gone through the application and the annexures thereto. I have carefully gone through the impugned judgment.

3 For the sake of convenience and clarity, the applicant shall hereinafter be referred to as 'the complainant' and the respondent no.2 as 'the accused.'

4 The case of the complainant was that he had entered into an agreement with the accused to purchase a flat from the accused for Rs.11 Lac. For that purpose, the complainant obtained loan from a Co-operative Credit Society and by

withdrawing amounts from time to time, paid an amount of Rs.7 Lac to the accused. However, the accused did not complete the transaction within the agreed time. Ultimately, therefore, the accused returned the amount, received by him from the complainant, by issuing two cheques, both dated 9th September 2003, and both in the sum of Rs.3,50,000/- each. These cheques were dishonoured 'for want of sufficient funds' in the drawer's account, and since, inspite of the demand notice, the amount of the said cheques was not paid, the prosecution was launched.

5 The learned Magistrate doubted the version of the complainant primarily because the complainant was not able to state the details as to how the amount of Rs.7 Lac had been paid by him to the accused. The complainant could not state as to, on which date how much amount was paid to the accused. It appears from the impugned judgment that the complainant even did not state whether any part of the amount was paid by a cheque. There was no receipt obtained by the complainant from the accused in respect of the payment of the amount. The source of

the amount was given by the complainant as, his taking of loan from a Co-operative Credit Society, but it transpired that the loan was taken in the year 2002 and the transactions with the accused were said to be from the year 2000.

6 Apart from this, the Magistrate though it somewhat unusual that for repayment of one loan, two cheques of the same date should be issued. In that context, it was relevant that the date put on the cheques was, as and by way of a rubber stamp impression.

7 The accused had contended that the writing on the cheque was not his.

8 The learned counsel for the complainant submitted that, that the accused had failed to give any reply to the demand notice, would be a circumstance against the accused. Even accepting it to be so, considering all the relevant aspects of the matter, it certainly could not be treated as decisive or conclusive, by the Magistrate.

9 The view of the matter, as taken by the Magistrate, appears to be proper. In any case, it is a possible view. It is well settled that when such is the position, grant of leave would be futile.

10 Leave refused.

11 The application is rejected.

(ABHAY M. THIPSAY, J.)