

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

**APPLICATION FOR LEAVE TO APPEAL (PVT) NO.548 OF 2013
with
APPLICATION FOR LEAVE TO APPEAL (PVT) NO.549 OF 2013**

Mr.Arif Gafur Sayyad ... **Applicant**
V/s.

Mr.Hatim Abdulla Padawalla ... **Respondent**

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Mr.Sanjay A. Ghaisas i/b. A.M.Joshi, Advocate for the Applicant.
Mr.R.N.Sukhija, 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 : 17TH MARCH 2015

P.C.

1. These two applications can be conveniently disposed of by this common order.

2. The applicant in these two applications had prosecuted the respondent in the applications in two separate criminal cases alleging commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881 by the respondent. One case related to a cheque in the sum of Rs.1,00,000/- while the other related to a cheque in the sum of Rs.2,50,000/-. The cheque in

the sum of Rs.1,00,000/- had been allegedly issued by the respondent on 04/10/2010, while the other was issued on 07/10/2010. The liability, in discharge of which both the cheques were issued, is one and the same: viz.- hand-loan taken by the respondent from the applicant 'from time to time'.

3. The learned Magistrate, after holding two separate trials, passed an order of acquittal in both the cases against the respondent. The applicant is aggrieved by the said orders of acquittal and is, therefore, by the present applications, seeking leave to file appeals from the said orders.

4. It is not in dispute that the respondent is the father-in-law of the applicant.

5. I have carefully gone through the Judgment delivered by the Magistrate.

6. The respondent had examined himself on oath as a witness for defence and the Magistrate appears to have accepted and believed his version. Among other things, the Magistrate observed that no details of the hand-loan, allegedly given by the applicant to the respondent, were given by the applicant in the evidence. I do not find that such details were given in any of the complaints either.

7. The cheques in both the cases have been issued in succession. There is not much time gap between the issuance of these two cheques. The liability in question was one and the same i.e. repaying a part of the amount that had allegedly been received by the respondent from the applicant from time to time as hand-loan.

8. The Magistrate also observed that the wife of the applicant i.e. daughter of the respondent had given a notice through her advocate to the respondent seeking her share in the property of the respondent. This had taken place on 28/05/2010. The Magistrate, therefore, doubted that whether under these circumstances, the respondent would have issued cheques to the applicant. The Magistrate, therefore, accepted the theory of the respondent that two blank cheques had been given by him to his daughter i.e. wife of the applicant, which were misused by the applicant after a dispute had started between the respondent and his daughter i.e. the applicant's wife.

9. The conclusion arrived at by the learned Magistrate is based primarily on accepting the evidence of the respondent. There seems to be no reason to hold that the appreciation of the evidence of the respondent, as done by the Magistrate, is incorrect.

10. The view of the matter as taken by the Magistrate, in any case, appears to be a possible view. The doubt felt about the truth of the version of the applicant, cannot be said to be unreasonable.

11. Under these circumstances, grant of leave would be futile.

Operative Order in Application for Leave to Appeal (Pvt)
No.548 of 2013

12. Leave refused.

13. The application is rejected.

Operative Order in Application for Leave to Appeal (Pvt)
No.549 of 2013

14. Leave refused.

15. The application is rejected.

(ABHAY M. THIPSAY J.)