IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

APPLICATION FOR LEAVE TO APPEAL (PVT) NO.456 OF 2014

Mr.Shailesh Kantilal Sodha ... **Applicant**
V/s.
Mrs.Usha Dilip Davada & Anr. ... **Respondents**

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Ms.Sandhya M. for Anil Joshi, Advocate for the Applicant.
Mrs.M.R.Tidke, APP for the Respondent/State.

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CORAM : ABHAY M. THIPSAY J.

DATED : 24TH FEBRUARY, 2015

P.C.

1. The applicant had prosecuted the respondent No.1 on the allegation of her having committed an offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The Judicial Magistrate, First Class, Thane, after holding a trial found the respondent No.1 not guilty and passed an order of acquittal. The applicant is aggrieved by the said order of acquittal and is, by the present application, seeking special leave of this Court as contemplated under Section 378(4) of the Code of Criminal Procedure to file an appeal from the order of acquittal.

2. I have heard Ms.Sandhya, the learned counsel for the applicant in support of the application. With her assistance, I have gone through the application and the impugned Judgment, a copy of which annexed to the application.

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 was that in the month of October 2012 the accused had approached him for a friendly loan of Rs.2,50,000/-, which was given; and that, as and by way of returning the said hand loan, the accused issued a cheque in the sum of Rs.2,50,000/- to the complainant on 22/02/2013. That, the said cheque was dishonoured with the endorsement, 'Refer to Drawer' and since the amount of the said cheque was not paid in spite of a demand notice, the prosecution was launched.

5. The observations made by the learned Magistrate which led to the acquittal are as follows :

(i) The cheque in question was drawn at Sangli Bank. It transpired in the evidence that Sangli Bank had merged with the I.C.I.C.I. Bank in the year 2007 itself.

(ii) The defence of the accused was that complainant had earlier stood guarantor in respect of a certain loan taken by the accused in the year 2004 and that, at that time, the accused had given a blank signed cheque to the complainant as and by way of security. According to the accused, the loan taken by him was repaid, but the blank signed cheque, which was with the complainant, was misused by the complainant.

(iii) Admittedly, the name and date on the cheque had not been written by the accused.

(iv) There was no evidence of the friendly loan except the cheque itself and the existence of the cheque, under the circumstances, by itself was not felt sufficient by the Magistrate to accept the theory of hand loan having been advanced on a particular date.

6. The conclusions arrived at by the learned Magistrate appear to be proper and legal. In fact, it is more likely than not that the cheque had been given before the merger of the Sangli Bank with the I.C.I.C.I. Bank. It is interesting, in this context, to note that the complainant did not find it necessary to keep any witness present, while handing over loan to the accused, but felt it necessary to keep two witnesses present, when accused was giving the cheque to him allegedly for the repayment of the loan taken in the year 2012.

7. In any case, the view of the matter as taken by Magistrate is a possible view. It is well settled, that under such circumstances, grant to leave would be futile.

8. Leave refused.

9. The application is rejected.

(ABHAY M. THIPSAY J.)