

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 862 OF 2015

Laxman S/o Kachru Tribhuvan .. Applicant

Vs.

Ashok Tulsiram Kamble .. Respondent

.....
Mr K. A. Ingle, Advocate for applicant
Mr R. V. Gore, APP for respondent/State
.....

CORAM : M.T. JOSHI, J.

DATE : 22/02/2016

ORAL ORDER:

. Heard both sides. Aggrieved by the acquittal of respondent No. 1 from the offence punishable under Section 138 of the Negotiable Instruments Act, the original complainant has filed the present application seeking leave to file appeal against acquittal.

2. According to the complainant, he had advanced a hand loan of Rs. 60,000/- to respondent on 18.03.2009. Later on, he again asked applicant for an amount of Rs. 60,000/- as a loan. Upon payment on both the occasions, respondent issued the impugned cheque to the tune of Rs. 1,20,000/- to the applicant. When the said

cheque was presented for clearance to the banker of respondent, it was dishonoured for insufficient funds and thereafter on refusal to accept the demand notice issued by R.P.AD. to respondent, complaint came to be filed.

3. The submissions from both the sides would show that the learned Judicial Magistrate First Class, Aurangabad has acquitted the respondent firstly on the ground that, the demand notice was not proved and secondly, it was found that the cheque was not issued towards any legally enforceable liability. The defence was that, in fact, the respondent had obtained only an amount of Rs. 40,000/- from the applicant and he repaid an amount of Rs. 2,00,000/- along with interest, however, the applicant without any reason kept with him the blank cheque signed by respondent.

4. It is an admitted fact that, there is no contemporary document regarding payment of Rs. 1,20,000/- to the respondent. The learned Judicial Magistrate First Class, Aurangabad took into consideration the statement of the complainant that, at the time of payment to the respondent the respondent

executed a mortgage deed however, he himself kept the said document with him. Not only this, during cross-examination the complainant has admitted that only an amount of Rs. 40,000/- was paid to the respondent. In view of this fact, the reasoning forwarded by the learned Judicial Magistrate First Class, Aurangabad cannot be faulted with.

5. Criminal Application for leave to file appeal against acquittal of respondent is therefore dismissed. Leave refused.

[M.T. JOSHI]
JUDGE

sgp