

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

CRIMINAL APPLICATION NO. 984 OF 2015

ANIL S/O BALASAHEB MURDE
VERSUS
ADINATH TRIMBAK BODKHE

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Advocate for Applicant : Mr. Ram B. Deshpande.

Advocate for Respondent : Mr. Sunil B. Jadhav.

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CORAM : **INDIRA K. JAIN, J.**

DATE : 11th April, 2016.

P.C.:

. By this application Complainant is seeking leave to appeal against the judgment and order dated 16th December, 2014 passed by the learned Judicial Magistrate First Class, Ashti, District Beed in S.C.C. No.560 of 2003 acquitting the sole Respondent of the offence punishable under Section 138 of the Negotiable Instruments Act.

2 Heard the learned counsel for parties. Perused record.

3 It is not seriously in dispute that Complainant is a medical practitioner and Accused was Headmaster. Both had friendly relations.

4 According to Complainant Accused was in need of money so on 30th May, 2003 he paid Rs.50,000/- to Accused as hand loan in the presence of witnesses.

5 On 30th June, 2003 Complainant visited the house of Accused and demanded money. Accused issued cheque. Same was dishonoured. Legal notice was issued. Then complaint under Section 138 of the Negotiable Instruments Act was filed before the Court.

6 Substance of accusations was explained to the Accused. He pleaded not guilty and claimed to be tried. Accused raised a defence alleging that Complainant took print of cheque from computer and to defame falsely implicated him.

7 Complainant examined 6 witnesses in support of his case. On issuance of cheque by Accused, its dishonour and statutory notice Trial Court answered the points in the affirmative. The Court however came to the conclusion that cheque in question was not issued in the discharge of legally enforceable liability and acquitted the Accused.

8 Complainant examined himself and bank officer PW-4 Ashok Ramchandra Changune to show that cheque was issued by

Accused and same bears his signature. It is stated by Complainant in his evidence that he and Accused had friendly relations and as Accused was in need of money, he advanced him Rs.50,000/- as hand loan. Complainant relied upon notice (Exhibit 121) issued to him by Advocate of Accused. In this notice Accused had asked the Complainant to repay Rs.1,00,000/- taken as hand loan from him and return the cheque of Rs.50,000/- i.e. cheque in question. Notice (Exhibit 121) was proved by Complainant through Advocate of Accused PW-5 Kantilal Sitaram Aswar. This notice was held to be in favour of Accused and not in support of Complainant though Accused denied this notice in his statement under Section 313 of the Code of Criminal Procedure.

9 It appears that Complainant replied notice Exhibit 121 vide reply notice Exhibit 140. Trial Court observed that Complainant had simply denied the contents and no explanation has been offered by Complainant to notice Exhibit 121.

10 With the assistance of the learned counsel for parties this Court has gone through the evidence of Complainant, his witnesses and perused Exhibits 121 and 140. It is found that Applicant has an arguable case. Application thus deserves to be allowed. Hence the

following order –

ORDER

- I. Criminal Application No.984 of 2015 is allowed.
- II. Leave granted.
- III. Appeal is **Admitted**.
- IV. Mr. Sunil B. Jadhav, learned counsel for Respondent waives service of notice.
- V. Action under Section 390 of the Code of Criminal Procedure stands dispensed with.

[INDIRA K. JAIN, J.]

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