

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 1335 OF 2015

Tukaram s/o Baburao Sanap,
Age: 50 years, Occ: Agri.,
R/o. Lohasar, Tq. Pathardi,
Dist. Ahmednagar.

...Applicant

versus

1. The State of Maharashtra.

2. Manik s/o Tukaram Gite,
Age: 36 years, Occ: Agri.,
R/o. Dongarwadi Chichondichi,
Tq. Pathardi, Dist. Ahmednagar.

...Respondents

.....
Ms. Vandana H. Sangole Advocate h/f Mrs. M.A. Kulkarni,
Advocate for applicant
Mr. D.V. Tele, A.P.P. for respondent/State
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CORAM : N.W. SAMBRE, J.

DATE : 14th MARCH, 2016

ORAL ORDER :

Learned Judicial Magistrate, First Class, Pathardi by judgment and order dated 21/01/2015 acquitted respondent No. 2 under Section 255(1) of Code of Criminal Procedure of an offence punishable under Section 138 of the Negotiable Instruments Act. As such, present application under Section 378(4) of Code of Criminal Procedure seeking leave to appeal.

2. The case as was pleaded by present applicant that the loan agreement was executed between the applicant and respondent for an amount of Rs.20,000/- and against the same, cross cheque for an amount of Rs.20,000/- dated 01/05/2010 at Exhibit-41 came to be issued, drawn on Central Bank of India, Branch Shiral Chichondi, Taluka Pathardi, District Ahmednagar. The cheque was presented on 17/09/2010 and as the same was returned, statutory notice came to be issued on 28/09/2010, which was acknowledged vide Exhibit-46.

3. The plea of the accused was recorded at Exhibit-32 and has pleaded not guilty.

4. Learned Magistrate then proceeded to evaluate the case of the complainant-applicant and acquitted the accused by the judgment. As such, present application seeking leave to file an appeal.

5. Learned Counsel for the applicant would submit that on two counts, on which the acquittal is granted are; (a) the claim was time barred and (b) that the cheque was presented for second time had hardly any bearing with the merits of the matter.

6. According to learned Counsel for the applicant, in view of

law laid down by this Court in the matter of ***Shamsundar Babu Naik Dessai vs. Baban Anant Naik*** reported in ***2009 Mh.L.J. 179***, the cheque can be very much presented for second time in the same transaction. She would invite my attention to the paragraphs-13, 19 and 20 of the judgment cited supra.

7. With the assistance of learned Counsel and learned A.P.P. I have perused the judgment of acquittal delivered by Magistrate. In the present case, it is required to be noted that the accused has not led any evidence. The cheque was dishonoured on the count of 'insufficient funds'. It is then required to be noted that the cheque was presented once to Ahmednagar District Central Co-operative Bank Ltd., on 03/08/2010 at Exhibit-42 and was returned on 05/08/2010 with memo at Exhibit-43. The cheque was then again presented to the bank on 17/09/2010 and pursuant to which, the complaint came to be lodged. The postal department has issued acknowledgment at Exhibit-60 and it is required to be noted that notice, accordingly, came to be issued under Section 138 of Negotiable Instruments Act.

8. Admittedly, loan agreement is of 2006 and cheque was initially issued on 01/01/2006, which was later on corrected to 01/05/2010 i.e. there was correction of four years.

9. It is required to be noted that for the claim of recovery in civil matters, limitation is provided for three years. In the present case, which is quasi-criminal nature, it is to be noted that the cheque of 2006 was brought into limitation by making endorsement of 2010 that the alleged debt was only Rs.20,000/-. No explanation is coming forward from the applicant as to why the cheque was initially presented on 03/08/2010, notice under the Negotiable Instruments Act was issued, still no action was initiated. The action was initiated upon second presentation.

10. The acquittal, as is ordered, is based on the above referred reasons, as to legally admitted debt by the respondent in the above referred background, was claimed to have been disputed or rather not established.

11. In view of above and judgment relied upon by learned Counsel for the applicant in the matter of **Shamsundar** (supra) is examined, in the said case, the factual matrix was that the cheque as was issued earlier was returned by the accused to the complainant and afresh cheque in that case was issued, which was found to be a basis for initiation of the complaint. The Court, while dealing with the issue that was raised in the background of Section 25 of the Indian

Contract Act has ruled in favour of the complainant that the complaint in view of second cheque was very much maintainable. In the present case, what is noted is, the cheque was initially issued on 01/01/2006 and then before its encashment, the date thereafter was corrected to 01/05/2010. After 01/05/2010 when the cheque was dishonoured, though notice was issued, however, same was not taken to its logical end but it was again presented, which is found to be basis for initiation of proceedings under Section 138 of the Negotiable Instruments Act.

12. In my opinion, learned Magistrate has rightly taken a view that the legally enforceable liability, in the above referred background, by the complainant against respondent, as such, was not established. In view of above, no case for leave to file appeal is noticed. As such, leave is refused.

[N.W. SAMBRE, J.]