

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

APPELLATE SIDE JURISDICTION

CRIMINAL APPLICATION NO. 2558 OF 2015

BABASAHEB S/O DADASAHEB NIMSE
VERSUS
BAPUSAHEB BHAURAO JAGTAP AND ANOTHER

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Advocate for Applicant : Mr. Sachin S. Kotkar.
Advocate for Respondent No.1 : M. Vishnu B. Madan.
APP for Respondent No. 2 : Mrs. R. K. Ladda.

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CORAM : **INDIRA K. JAIN, J.**
DATE : 14th March, 2016.

P.C.:

. Here is an application under Section 378 (4) of the Code of Criminal Procedure for grant of leave to appeal against the judgment and order dated 13th March, 2015 passed by the learned Judicial Magistrate First Class, Newasa, District Ahmednagar in S.C.C. No.282 of 2012. By the said judgment and order learned Magistrate has acquitted the sole Accused of the offence punishable under Section 138 of the Negotiable Instruments Act.

2 Heard the learned counsel for parties. Perused record.

3 It is the case of Complainant that Accused was his close

friend. He borrowed money from Complainant on several occasions. Initially Accused repaid money and so Complainant had trust in Accused.

4 According to Complainant Accused started business in the name of Sun Crop Chemicals and Fertilizers. He was in need of money for running his new business. Accused borrowed Rs.5,00,000/- from Complainant. Complainant raised the amount of Rs.5,00,000/- by selling gold and gave the same to Accused in the presence of Dr. Sampat Khose in his hospital. Thereafter Accused was again in need of money. He approached Complainant. Complainant transferred the amount to the Bank account of Accused. In all Accused borrowed Rs.9,00,000/- from the Complainant.

5 On 5th May, 2012 Accused issued cheque to Complainant towards repayment of amount borrowed by him. On presentation cheque was dishonoured. Legal notice was issued. Since Accused did not comply with demand in legal notice complaint under Section 138 of the Negotiable Instruments Act was filed before the learned Magistrate.

6 Particulars of offence were explained to the Accused. He pleaded not guilty and claimed to be tried. He raised a specific defence of misuse of cheque by the Complainant.

7 Complainant examined himself and relied upon various documents. In rebuttal Accused examined DW-1 Aaditya Bhalerao one of the partners of the firm.

8 Upon considering the evidence adduced by parties Trial Court came to the conclusion that cheque was not for discharge of legally enforceable debt and acquitted the Accused. Hence this application for leave to appeal against the judgment and order of acquittal.

9 With the assistance of learned counsel for parties this Court has gone through the evidence adduced by Complainant and Accused. It can be seen from evidence of Complainant that Accused was his friend. He borrowed money on several occasions. Accused repaid the same initially. Therefore Complainant reposed trust in Accused and on subsequent events when Accused was to start his new business he lent him Rs.9,00,000/-. According to

Complainant cheque was issued by Accused towards repayment of Rs.9,00,000/- borrowed by him from time to time from Complainant. In cross-examination Complainant admitted in unequivocal terms that he is one of the partners of Sun Crop Chemicals and Fertilizers. There was no whisper in the complaint that Complainant was one of the partners alongwith the Accused. Complainant thus suppressed material fact in the complaint for which no plausible explanation could be assigned by the Complainant.

10 Another drawback in the case of Complainant was that he did not prove relevant documents to show that he lent huge amount of Rs.9,00,000/- to Accused. Even witness Dr. Sampat Khose in whose presence money was lent was not examined. In the absence of documentary evidence Trial Court held that Accused cannot be convicted of the offence merely on verbal statement of Complainant.

11 It was the defence of Accused that Complainant was looking after the affairs of partnership and its business. All the documents including blank signed cheques of Accused used to remain with Complainant. Taking disadvantage of this fact

Complainant misused one of the cheques signed by Accused and made up a concocted story. Accused examined DW-1 Aaditya Bhalerao in support of his defence. Evidence of DW-1 Aaditya Bhalerao substantiates the defence raised by Accused.

12 In view of the evidence of defence witness and considering the serious infirmity in the evidence of Complainant as well as material admissions extracted in the cross-examination Trial Court came to the conclusion that defence is more probable and the story put forth by Complainant is not worthy of acceptance. This Court finds no reason to take a view different than taken by the Trial Court. Hence the following order -

ORDER

Criminal Application No.2558 of 2015 stands dismissed.

[INDIRA K. JAIN, J.]

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