

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

CRIMINAL APPLICATION NO. 3011 OF 2015

Umesh Balwant Inamdar

..APPLICANT

VERSUS

Rashmi Narayan Bandekar @
Rashmi Rahul Kothare

..RESPONDENT

....
Mr. Y.U. Kakade, Advocate for applicant.
Mr. Mayur Joglekar, Advocate h/f Mr. Patel Shaikh Ashpak Taher,
Advocate for Respondent No.1.

....
CORAM : INDIRA K. JAIN, J.
DATED : 5th APRIL, 2016

ORDER :

. This is an application under Section 378(4) of the Code of Criminal Procedure for leave to appeal against the judgment and order dated 31.03.2015 passed by the learned Judicial Magistrate First Class, Ahmednagar in S.T.C. No. 129/2008 acquitting the sole accused of the offence punishable under Section 138 of the Negotiable Instruments Act.

2. Heard Mr. Kakade, learned Counsel for applicant and Mr. Joglekar, learned Counsel holding for Mr. Patel, learned Counsel for Respondent No.1. Perused record.

3. It is the case of complainant that he had friendly relations with Rahul Kothari husband of the accused. Accused and her husband approached the complainant and demanded hand loan. Considering friendly relations complainant paid money from time to time to the accused and her husband. After repeated demand cheque was issued by accused on 22.11.2007. Said cheque was dishonoured. Legal notice was issued and then complaint under Section 138 of the Negotiable Instruments Act was filed.

4. The substance of accusations was explained to the accused vide Exhibit 17. He pleaded not guilty and claimed to be tried. She denied having undertaken any responsibility on behalf of her husband to repay the loan amount. Accused submitted that cheque was not issued in the discharge of legally enforceable debt. The alleged debt was time barred and notice was not duly served on her.

5. Complainant to bring home the guilt of accused examined in all five witnesses and relied upon number of documents. Accused also examined herself and placed reliance on documentary evidence.

6. Considering the evidence adduced by the parties, Trial Court came to the conclusion that agreement between accused and her husband to repay the loan amount was not proved and the cheque was

not issued in the discharge of legally enforceable debt. Trial Court observed that cheque was towards time barred debt and liability cannot be legally fastened on the accused. In consequence thereof accused was acquitted. Being aggrieved, present application for leave to appeal is preferred.

7. This Court has gone through the complaint, documents and evidence adduced by the parties. It can be seen from complaint that there is no whisper regarding details of transactions took place from time to time between the parties. Complaint is vague.

8. If the evidence of bank officers is considered at the most it would prove exchange of money from one account to another. Evidence of bank officers would not be helpful to complainant to prove that cheque was issued in the discharge of legally enforceable debt. There is no cogent and consistent evidence to prove this important ingredient. Complainant did not bother to bring on record the total amount parted with and given to accused. Further there is no cogent evidence to show that accused had undertaken the liability to repay the alleged hand loan on behalf of her husband. In such circumstances no purpose would be served even if leave is granted. Hence the following order:

ORDER

- I) Leave refused.
- II) Criminal Application No. 3011 of 2015 stands dismissed.

(INDIRA K. JAIN, J.)