

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

CRIMINAL APPLICATION NO. 5157 OF 2015

SINDU W/O ARJUN CHAURE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Applicant : Mr. Rajendra G. Hange.

APP for Respondent No.1 : Mr. S. D. Ghayal.

Advocate for Respondent No.2 : Mr. A. N. Nagargoje.

...

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

DATE : 22nd April, 2016.

P.C.:

. By this application, Applicant / original Complainant seeks leave to appeal under Section 378 (4) of the Code of Criminal Procedure against the judgment and order dated 21st July, 2015 passed by the learned Judicial Magistrate First Class, Beed in S.C.C. No.963 of 2014 acquitting the sole Accused of the offence punishable under Section 138 of the Negotiable Instruments Act.

2 Heard Mr. Rajendra G. Hange, learned counsel for Appellant and Mr. A. N. Nagargoje, learned counsel for Respondent No.2. Perused copies of depositions placed on record.

3 It is a case of Complainant that on 14th January, 2014 at the request of Accused she advanced loan of Rs.2,00,000/-. Accused issued cheque on 27th April, 2014 towards repayment of loan amount. Said cheque was dishonoured. Legal notice was issued on 17th June, 2014 and thereafter complaint under Section 138 of the Negotiable Instruments Act came to be filed.

4 It can be seen from the reasonings recorded by Trial Court that basically on two grounds Complainant's claim has been negated.

- (i) Complainant had no financial capacity to advance loan, and
- (ii) Legal notice was not personally served on the Accused.

So far as financial capacity of Complainant is concerned, it is apparent from evidence of CW-2 Bapurao Shelke that loan amount of Rs.2,00,000/- was advanced by Complainant to Accused in his presence. Trial Court had not properly considered the evidence of CW-2 in the judgment. So far as service of notice is concerned, it appears that notice was issued through department in which Accused was serving at the relevant time.

5 Considering the evidence brought on record and the reasonings recorded by Trial Court this Court finds that Complainant has an arguable case. Hence the following order –

ORDER

- I. Criminal Application No.5157 of 2015 is allowed.
- II. Leave granted.

[INDIRA K. JAIN, J.]

ndm