

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

CRIMINAL APPLICATION NO. 5273 OF 2015

Sachin s/o Ganesh Mohare

...Applicant

VERSUS

Dinesh s/o Mohan Runwal

...Respondent

.....
Shri S.S.Gangakhedkar, advocate for applicant
.....

CORAM : INDIRA K.JAIN, J.

DATED : 15th MARCH, 2016

ORDER :

This application is under Section 378 (4) of the Code of Criminal Procedure for grant of leave to appeal against the judgment and order, dated 31.7.2015, passed by the learned Judicial Magistrate, First Class, Mahur, District Nanded in S.C.C. No. 150 of 2014 acquitting the accused of the offence punishable under Sections 138 of the Negotiable Instruments Act.

2] Heard learned counsel for the applicant. None for the sole respondent. Perused papers annexed along with the application.

3] It is the case of complainant that accused is his relative. Both are businessmen. Accused was running a jewellery shop. In July, 2012 accused approached the complainant and demanded

hand loan of Rs.3,00,000/-. He assured repayment after Diwali. Considering the relationship between complainant and accused hand loan of Rs.3,00,000/- was advanced to the accused.

4] On 16.4.2013 accused issued a cheque of Rs.3,00,000/- to the complainant. The cheque was presented for encashment. It was dishonoured. Legal notice was issued. Accused did not comply with the legal notice. Case under Section 138 of the Negotiable Instruments Act was filed before the learned Magistrate. Particulars of the offence came to be explained to the accused. He pleaded not guilty and claimed to be tried.

5] Particulars of the offence came to be explained to the accused. He pleaded not guilty and claimed to be tried. Complainant examined himself. Considering the evidence of complainant and defence of the accused, Trial Court came to the conclusion that cheque was not issued in discharge of legally enforceable debt and consequently dismissed the complaint. Being aggrieved, present application for leave to appeal has been preferred by the complainant.

6] With the assistance of the learned counsel for the applicant this court has gone through the evidence of complainant and reasons recorded by the Trial Court in the judgment. It is pertinent to note that S.C.C. No. 149 of 2014 was filed by the brother of complainant against the same accused. The transactions between complainant and accused and brother of complainant and accused were different. Two different cheques were issued, one to

the complainant and another to the brother of complainant. Both the cheques were not issued in the course of same transaction and cause of action for both the cheques was different.

7] It appears from the reasons recorded by the Trial Court, particularly in para 15 that defence raised by accused in S.C.C. No. 149 of 2014 and case filed by complainant was clubbed together without any reasoned order. No notice of clubbing the defence was given to complainant. The learned Magistrate has followed the novel procedure which has resulted into serious prejudice to the complainant.

8] In the above premise and without going into further merits of the case, this court finds that complainant has an arguable case. Hence, the following order.

ORDER

- (i) Criminal Application No. 5273 of 2015 is allowed. Leave to appeal granted.
- (ii) Admit.
- (iii) Action under Section 390 of the Criminal Procedure Code.

[INDIRA K.JAIN, J.]