

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

CRIMINAL APPLICATION NO. 5991 OF 2015

Alka Limbaji Sangale

.APPLICANT

VERSUS

State of Maharashtra and Another

.RESPONDENTS

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Mr. S.B. Choudhari Advocate for applicant.

Mrs. R.K. Ladda, APP for Respondent No.1.

Mr. Prasad Kadam, Advocate h/f Mr. S.J. Salunke, Advocate for Respondent No.2.

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CORAM : INDIRA K. JAIN, J.

DATED : 30th MARCH, 2016

ORDER :

. This application under Section 378(4) of the Code of Criminal Procedure is for grant of leave to appeal against the judgment and order dated 01.09.2015 passed by the learned Judicial Magistrate First Class, Kallamb in Summary Criminal Case No. 665 of 2012. By the said judgment and order the learned Judicial Magistrate First Class acquitted the sole respondent/accused of the offence punishable under Section 138 of the Negotiable Instruments Act.

2. Heard Mr. Choudhari, learned Counsel for applicant and Mr. Kadam, learned Counsel holding for Mr. Salunke, learned Counsel for Respondent No.2. Perused record.

3. It is the case of complainant that at the relevant time she was in government service. Respondent No.2 was also a government servant. They were residing in adjoining houses and were knowing each other since about 8 years. Accused was in need of money for the marriage of his daughter. He approached the complainant and demanded Rs.2,00,000/- as hand loan. Accused assured the complainant that after marriage he would repay the hand loan.

4. On 06.06.2012 accused issued the cheque. The said cheque was presented to the bank for encashment. It was dishonoured. Legal notice was issued. It returned unclaimed. Then complaint under Section 138 of the Negotiable Instruments Act was filed before the Magistrate.

5. The substance of accusations was explained to accused. He pleaded not guilty and claimed to be tried. Accused raised specific defence and submitted that cheque was issued towards security for a Bhishi transaction. It is alleged that complainant misused the cheque and falsely implicated him.

6. Complainant examined himself and two more witnesses Madhukar and Shrikant. Accused did not examine any witness in support of his defence. However he placed reliance on admissions elicited in cross examination of the complainant and the witnesses.

7. After considering the evidence Trial Court came to the conclusion that the source of collection of huge amount of Rs.2,00,000/- was not disclosed by the complainant and the witnesses and therefore it was treated as fatal to complainant's case. Learned Magistrate observed that the cheque was not issued in the discharge of legally enforceable debt or liability and consequently dismissed the complaint. Being aggrieved thereof present application for leave to appeal has been preferred.

8. This Court has gone through the evidence of complainant and his witnesses Madhukar and Shrikant. It can be seen from evidence of complainant and both the witnesses that amount of Rs.2,00,000/- was paid by complainant to accused. Accused did not dispute his signature on cheque. It is also not in dispute that cheque was issued by him to the complainant. What is disputed is the purpose of issuance of cheque. It is the defence of accused that cheque was issued towards security for a Bhishi transaction. Accused did not examine himself or any other witness to substantiate his stand.

9. Needless to state that in view of admissions of the accused regarding issuance of cheque and signature, it was for him to show that the cheque was issued as security for Bhishi transaction and not towards

repayment of hand loan as alleged by complainant. As accused did not adduce any evidence to rebut the statutory presumption under Section 139 of the Negotiable Instruments Act this Court finds that complainant has an arguable case on merits. Application deserves to be allowed. Hence the following order:

ORDER

- I) Criminal Application No. 5991 of 2015 is allowed in terms of prayer clause B.
- (II) Admit.
- (III) Action under Section 390 of the Code of Criminal Procedure.

(INDIRA K. JAIN, J.)