

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.160 OF 2015

UTTAMSINGH MORSINGH CHAVAN)...APPLICANT

V/s.

PRATAP PANDURANG VAIDANDE AND ANR.)...RESPONDENTS

Shri Kalpesh Patil, Advocate for the Applicant.

Smt.PPBhosale, APP for the Respondent - State.

CORAM : ABHAY M. THIPSAY, J.

DATE : 5th APRIL 2016.

P.C. :

1 The applicant had prosecuted the respondent alleging commission of an offence punishable under Section 138 of the Negotiable of Instruments Act. The Judicial Magistrate First Class, Karad, after holding a trial, found the respondent not guilty and acquitted him. The applicant is aggrieved by the said order of acquittal, and is, therefore, by the present application, seeking special leave of this court to appeal therefrom.

2 I have heard Shri Kalpesh Patil, the learned counsel for the applicant. I have gone through the application and the annexures thereto, which include a copy of the complaint and the impugned judgment. I have also glanced through the notes of evidence adduced during the trial, which have been made available to me by the learned counsel.

3 For the sake of convenience and clarity, the applicant shall hereinafter be referred to as 'the complainant' and the respondent no.1 as 'the accused.'

4 The complainant's case, as put forth before the Magistrate, was that, the complainant owns a *dhaba* where the accused was working as a cook. That, in February 2013, the accused was in financial difficulty, and therefore, requested the complainant to give him a hand-loan. The complainant gave a loan of Rs.90,000/- to the accused. The accused had agreed to return the same within two months. The accused, however, left the job and did not return. The complainant, from time to time,

made demands for repayment of the loan amount, and as such, the accused, on 31st December 2013, gave a cheque in the sum of Rs.90,000/-, drawn on Karad Urban Co-operative Bank Ltd., to the complainant. The said cheque was dishonoured with the remark '*Funds insufficient*'. Since the amount of the cheque was not paid inspite of making a demand therefor in writing, the complaint came to be lodged.

5 The complainant examined himself as a witness during the trial. The accused also examined himself as a witness in defence.

6 The learned Magistrate doubted the case of the complainant, primarily, for the following reasons.

7 According to the complainant, when the loan was advanced to the accused, the complainant had obtained a writing from the accused. This writing was not produced by the complainant during the trial before the Magistrate.

8 According to the complainant, the loan had been advanced in presence of two witnesses. However, none of these witnesses were examined during the trial.

9 The Magistrate also observed that according to the complainant, the loan was advanced in the month of February 2013, and that, the accused, thereafter, left the job of the complainant. The Magistrate, therefore, doubted, as to whether the accused, in these circumstances, was likely to come back to the complainant in December 2013 and give a cheque, which was to be dishonoured.

10 The Magistrate also observed that the complainant failed to establish that he had the financial capacity to advance a loan of Rs.90,000/-.

11 Though the last mentioned observation made by the Magistrate does not seem to be correct, and though the complainant certainly seems to be having sufficient financial

capacity to advance a loan of Rs.90,000/-, the other grounds on which the Magistrate doubted the truth of the complainant's version, cannot be said to be unjustified. The doubt felt by the Magistrate about the truth of the complainant's version is not unreasonable, and is borne out from the evidence adduced during the trial. The least that can be said is that the view of the matter, as taken by the Magistrate, is a *possible view*.

12 It is well settled that in such a case, grant of leave would be futile.

13 Leave refused.

14 The application is rejected.

(ABHAY M. THIPSAY, J.)