

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.302 OF 2013
WITH
CRIMINAL APPLICATION NO.303 OF 2013**

Premasukh Biharilal Mantri .. Applicant
Versus
Karim Babumiya Shaikh and anr .. Respondents

Mr.PK. Hushing, Advocate for the applicant.

Mr.A.B. Avhad, Advocate for respondent no.1.

Mrs.P.P. Bhosale, APP for the Respondent State.

CORAM : ABHAY M. THIPSAY, J.

DATED : 9th FEBRUARY 2016

P.C. :

1 These two applications can be conveniently disposed of by this common order as the parties are the same and the points needing determination are also identical. The applicant is the original complainant. He had filed two separate complaints against the respondent no.1 herein alleging commission of an offence punishable under Section 138 of the Negotiable Instruments Act.

2 The Judicial Magistrate First Class, Pune, after holding two separate trials, found the respondent no.1 not guilty in both the cases, and passed an order of acquittal in each case. Being aggrieved by the said orders of acquittal, the applicant has

filed the present applications seeking special leave of this Court to file Appeals therefrom.

3 I have heard the learned counsel for the applicant. I have heard learned counsel for respondent no.1. With the assistance of the learned counsel, I have gone through the applications, and the annexures thereto which include a copy of the notes of evidence recorded during the trial and also copies of the impugned judgments.

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

5 The case of the complainant, as put forth before the trial Court, was that he had advanced friendly loans to the accused, from time to time, by cash. That, the accused had issued the cheques in question towards the repayment of the loans so taken by him from time to time. As the cheques issued by accused dishonored, and as the amount thereof was not paid inspite of making a demand for the same, the prosecutions had been launched.

6 There was no writing showing or acknowledging that any amounts in cash were paid by the complainant to the accused. For this, the complainant relied only on his oral evidence and also the fact that cheques in question had been issued in his favour.

7 In the demand notices that were issued by complainant to the accused, there were some discrepancies, and though the complainant sought to make a correction in the demand notice thereafter, by issuing another notice, the fact remains that there are discrepancies about the dates on which the loan amounts were allegedly paid by the complainant to the accused.

8 What is further significant is that according to the complainant, even after some cheques previously given by the accused to him towards the repayment of the loans had dishonored, the complainant still advanced friendly loans to the accused by cash, and that too, without obtaining any acknowledgment in writing about receipt of such cash amounts.

9 The case made out by the complainant was not free from doubts. The learned Magistrate was therefore right in giving the benefit of that doubt to the accused and acquitting him. The least that can be said is that the view taken by the Magistrate, was certainly, a *possible view* of the matter.

10 Leave refused.

11 Applications are rejected.

(ABHAY M. THIPSAY, J)