

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.295 of 2015

Pravin Manohar Mithari .. Applicant
Versus
Sheetal Prabhakar Pokale & Ors .. Respondents

Mr.Ruturaj Pradip Pawar, Advocate for the applicant.

Mr.Anand Shivaji Patil, Advocate for respondent no.1.

Mr.V.B.Konde Deshmukh, APP for the Respondent State.

CORAM : ABHAY M. THIPSAY, J.

DATED : 19th JANUARY, 2016

P.C. :

1 The applicant is the original complainant. He had prosecuted the respondent no.1 on the allegation of having committed an offence punishable under Section 138 of the Negotiable Instruments Act. The Judicial Magistrate, First Class, Kolhapur, after holding a trial, acquitted the respondent no.1. The applicant being aggrieved by the said order of acquittal, is seeking special leave of this Court to file an Appeal against the said order of acquittal.

2 I have heard Mr.Ruturaj Pawar, learned counsel for the applicant. I have heard Mr.Anand Patil, learned counsel for the respondent no.1. With their assistance, I have gone through the application and the annexures thereto, carefully.

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

4 The case of the complainant, as put forth before the trial Court was that due to the cordial relations between him and the accused, he had, from time to time, advanced friendly loans to him. That, towards the part-payment of the said loan taken from time to time, the accused had issued two cheques to the complainant. Each cheque was in the sum of Rs.3,00,000/-. Both the cheques were dishonored because of insufficiency of funds in the account of the accused. Since even after making a demand of the amount of the cheques, it was not paid, the complainant filed two separate complaints against the accused for the dishonor of the said two cheques. The accused was acquitted in both the complaint cases. The present application relates to the acquittal in one of the said two cases.

5 During the trial, the complainant examined himself. The accused also examined himself in his defence.

6 The learned Magistrate doubted the case of the complainant for a number of reasons. The Magistrate observed that the complainant had not given any details of the hand loan/s, allegedly given by him to the accused from time to time, either in the complaint or in his affidavit of evidence in lieu of examination-in-chief. Not only that, these details were not given, but how much was the total amount due and payable by the accused to the

complainant, was also not disclosed by the complainant. The case of the complainant was that the two cheques of Rs.3,00,000/- each were issued by the accused towards *partial repayment* of the loan that had been advanced to him. In other words, the complainant had claimed that some more amount was also due and payable to him by the accused, but had preferred not to disclose how much was that amount, keeping that aspect vague.

7 There was no record, or receipts, in respect of any amounts allegedly advanced by the complainant to the accused, from time to time.

8 The accused submitted that there were no loan transactions, but some different types of transactions between the complainant and accused, and that they related to share broking. The accused, in order to show that there was a custom in the said business, of obtaining blank cheques towards security, produced one blank cheque which had been signed by the complainant. That this cheque had been signed by the complainant, was not disputed by the complainant in the cross-examination of the accused.

9 The doubt felt by the learned Magistrate about the truth of the complainant's case was reasonable. It indeed arose upon a consideration of the evidence on record.

10 It is well settled that while considering the question of grant of leave to file an Appeal, the considerations on which this Court interferes with an order of acquittal, need to be kept in

mind. It is well settled that where the view of the matter, as taken by the trial Court leading to the acquittal, is a *possible view*, this Court will not interfere with the order of acquittal.

11 In this case, certainly, the view taken by the Magistrate is a *possible view* of the matter.

12 Grant of leave, therefore, would be futile.

13 Leave refused.

14 Application is rejected.

(ABHAY M.THIPSAY, J)

CERTIFICATE

**Certified to be true and correct copy of the original
signed Judgment/Order.**