

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.356 OF 2015

MOHD. GAFOORUDDIN SIDDIQUI)...APPLICANT

V/s.

MOHD.AZIMUDDIN SIDDIQUE AND ANR.)...RESPONDENTS

Shri R.R.Bhardwaj, Advocate for the Applicant.

Shri I.K.Tripathi, Advocate for Respondent No.1.

Smt.PPBhosale, APP for the Respondent - State.

CORAM : ABHAY M. THIPSAY, J.

DATE : 11th FEBRUARY 2016.

P.C. :

1 The applicant is the original complainant who had prosecuted the respondent no.1 who is his real brother on the allegation that he had committed an offence punishable under Section 138 of the Negotiable Instruments Act (N.I.Act). The Metropolitan Magistrate, 20th Court, Mazgaon, after holding a

trial, acquitted the respondent no.1. Being aggrieved thereby, the applicant is seeking special leave to file an appeal against the said order of acquittal.

2 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.'

3 I have heard Shri R.R.Bhardwaj, the learned counsel for the complainant. I have heard Shri I.K.Tripathi, the learned counsel for the accused, who appears pursuant to notice. With the assistance of the learned counsel for the parties, I have gone through the application and the annexures thereto, which include copies of the notes of evidence recorded during the trial, complaint and the impugned judgment.

4 The case of the complainant was that he had given a hand loan to the accused in the sum of Rs.2 Lac, towards the repayment of which, the accused had issued the cheque in

question. Though the complainant and the accused are real brothers, the complaint mentions that the accused is the real uncle of the complainant. In spite of disclosing the relationship, the complainant repeatedly avers that the complainant knew the accused personally which is rather absurd, once the relationship is disclosed.

5 The cheque in question was dated 10th April 2014. According to the accused, a blank cheque had been given by him to the complainant sometime in the year 2011, which was misused by the complainant.

6 A number of contentions were raised by the complainant before the Magistrate, some of which were turned down. However, the Magistrate accepted the story of the accused, who had chosen to give evidence on oath, as plausible.

7 It is not necessary to discuss the entire reasoning of the Magistrate. It is sufficient to observe that, admittedly, at the

material time, the relations between the complainant and the accused were strained. A complaint had been lodged by the accused against the complainant with J.J.Marg Police Station for forgery and cheating and this complaint was produced before the Magistrate during evidence (Exhibit 32). Also a complaint had been lodged by the accused with the Assistant Commissioner Collector Office, raising grievances in connection with his dispute with the complainant and a copy thereof was also produced before the Magistrate during evidence (Exhibit 33). The accused had also filed a suit for injunction against the complainant on 24th March 2014.

8 The alleged loan transaction was not supported by any document except the cheque itself.

9 The date on which the complainant was given the cheque has not been categorically mentioned, and the complainant has chosen to be vague in that regard. The cheque, however, is dated 10th April 2014. At that time, proceedings

between the parties were already pending. It is, therefore, quite unlikely, that the accused would give a cheque to the complainant towards the repayment of the loan, of which there was no evidence, even assuming for the sake of arguments, that any loan had indeed been taken by the accused previously. The defence of the accused that a blank cheque signed by the accused, which was with the complainant when the relations between the complainant and the accused were cordial, has been misused by the complainant, after the relations were strained, is plausible.

10 The view of the matter, as taken by the Magistrate, is a *possible view*.

11 Under these circumstances, it would be futile to grant leave.

12 Leave refused.

13 The application is rejected.

(ABHAY M. THIPSAY, J.)