

Mohd. Gafooruddin Siddiqui ... **Applicant**
V/s.

Mohd. Azimuiddin Siddiqui & Anr. ... Respondents

Mr.R.R.Bharadwaj, Advocate for the Applicant.
Ms.Bhagyashri Gawas, Advocate for the Respondent No.1.
Mrs.M.R.Tidke, APP for the Respondent/State.

CORAM : ABHAY M. THIPSAY J.

DATED : 3rd MARCH 2016.

P.C.

1. The applicant is the original complainant, who had prosecuted the respondent No.1 on the allegation that he had committed an offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The Metropolitan Magistrate, 20th Court, Mazgaon after holding a trial, acquitted the respondent No.1. Being aggrieved thereby the applicant is seeking special leave of this Court 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 Mr.R.R.Bharadwaj, the learned counsel for the complainant. I have heard Ms.Bhagyashri Gawas, the learned counsel for the accused.

4. It is not in dispute that the facts of the present Application are similar to the facts relating to Criminal Application No.356 of 2015 decided on 11th February 2016. By that Application, leave to file an Appeal against the order of acquittal passed by the Magistrate in some other case between the parties was challenged. After hearing the counsel for the parties, leave was refused in that matter. The learned counsel for the accused submits that facts of the present case and that of the said case being identical, leave should be refused in the present case also.

5. I have gone through the order passed by me in Criminal Application No.356 of 2015. It is not in dispute that the facts of the present application and that of the said application are identical. I have been told that common evidence was recorded and identical judgment has been passed.

6. Basically, a doubt was felt about the correctness about the claim of the complainant, because it appeared that at the time when the cheque in question was allegedly issued, disputes were already pending between the complainant and the accused. The learned counsel for the applicant today submits that the disputes

which were taken to the police arose subsequently and not at the time of issuance of the cheque. Even if this is accepted as correct for the sake of arguments, it is clear that the accused had filed a suit for injunction against the complainant on 24th March 2014 itself.

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

8. The cheque in question was dated 24th April 2014. The defence of the accused was that blank cheques given by him to the complainant in the year 2011, when the relations between the accused and the complainant were good, were misused by the complainant.

9. The defence of the accused was thought probable by the learned Magistrate.

10. When disputes were pending between the complainant and the accused, that the accused would give a cheque to the complainant, is difficult to be accepted. The doubt felt by the Magistrate about the truth of the complainant's case cannot be said be unreasonable.

11. In any case, the view of the matter, as taken by the

Magistrate, is *a possible view*. It is well settled that in such circumstances grant of leave to file an appeal would be futile.

12. Leave refused.

13. The application is rejected.

(ABHAY M. THIPSAY J.)