IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.410 OF 2015

WITH
CRIMINAL APPLICATION NO.411 OF 2015

WITH
CRIMINAL APPLICATION NO.415 OF 2015

WITH
CRIMINAL APPLICATION NO.417 OF 2015

WITH
CRIMINAL APPLICATION NO.418 OF 2015

VIVEK ANANT PARVE)...APPLICANT

V/s.

ADROIT TECHNOLOGIES AND ANR.)...RESPONDENTS

Shri Vilas Tapkir, Advocate for the Applicant.

Shri Manoj S. Mohite, Advocate for Respondent No.1.

Shri V.B.KondeDeshmukh, APP for the Respondent - State.

CORAM : ABHAY M. THIPSAY, J.

DATE : 8th FEBRUARY 2016.

ORAL ORDER :

1 All these applications seeking special leave to file an appeal from different orders of acquittal passed by the Judicial Magistrate First Class, Pune, can be conveniently disposed of by this common order, as the parties are same and the questions involved are also the same.

2 The applicant is the original complainant. The respondent no.1 is the original accused. The applicant had filed various complaints against the respondent no.1 alleging commission of offences punishable under Section 138 of the Negotiable Instruments Act (N.I.Act hereinafter). After holding trials, the learned Magistrate acquitted the respondent no.1 in all the cases. It is being aggrieved thereby, that the present applications seeking special leave of this court to file appeals from the said orders of acquittal, have been made.

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 I have heard Shri Vilas Tapkir, the learned counsel for the complainant. I have heard Shri Manoj S. Mohite, the learned counsel for the respondent no.1. I have been taken through the impugned judgments and the notes of evidence adduced during the trial, copies of which are annexed to the applications.

5 The case of the complainant, as made out in the complaints, was that, he knew the accused who was introduced to the complainant through a close friend of the complainant. That, the accused was in dire and urgent need of money for his business, and therefore, approached the complainant through the said friend of the complainant, and demanded amounts as a 'short term deposit cum hand loan.' That, accordingly, the complainant paid different amounts to the accused on various dates, totally

amounting to Rs.4,27,000/-. That, towards the repayment of the said loan amount, the accused gave different cheques to the complainant, which were dishonoured, and the amount of the said cheques was not given inspite of making a demand therefor, in writing.

6 *It turned out from the evidence that the complainant is actually a money lender*. The complainant, nevertheless claimed that, inspite of he being a money lender, the loans which he had advanced to the accused, were 'hand loans.'

7 On going through he evidence, it becomes obvious that the story of the loans being 'hand loans' advanced to the accused had been introduced just to do away with the provisions of the Bombay Money Lenders Act, 1946, (hereinafter referred to as "the Money Lending Act") which the complainant had violated.

8 In coming to the conclusion that the accused was entitled to be acquitted, the learned Magistrate emphasized the

fact that these amounts of loans were not shown by the complainant in his Income Tax returns. He was of the view that, therefore, the said amounts were 'unaccounted' and could not be legally recovered by the complainant. Though this reasoning of the Magistrate cannot be accepted, I find that the complainant being a money lender, had just introduced a false story of advancing 'hand loan' to someone to avoid compliance with the provisions of the *Money Lending Act*. The effect of the non-compliance with the provisions of Sections 18 and 19 of the said Act, has been sought to be overcome by making a claim that '*what was advanced to the accused was a hand loan or friendly loan*.' If a professional money lender, who has secured the license for money lending, makes such claims, it would tend to defeat the provisions of Bombay Money Lenders Act, 1946, which are intended to serve a social purpose. Such circumvention of the relevant legal provisions cannot be permitted or encouraged.

9 In the course of arguments, reference was made to the provisions of Section 21 of the Bombay Money Lenders Act, 1946.

It shows that where the provisions of Section 18 or Section 19 of the said Act have not been complied with by the money lender, the court has a discretion either to disallow the whole of the claim of the complainant, or to allow it in part, as may seem reasonable to the court in the circumstances of the case. However, in the instance case, the accused was being prosecuted on the accusation of having committed an offence. The parameters of criminal liability must be certain. In cases of offences punishable under Section 138 of the N.I.Act, to hold an accused guilty, a satisfaction must be arrived at that 'the entire amount of cheque was indeed due and payable by the accused to the complainant.' When the complainant has not maintained accounts and has not complied with the mandatory provisions of the said Act, it would not be possible to arrive at a conclusion that the entire amount mentioned in the cheque in question was due and payable. The least that can be said that there would always be a doubt as to how much amount, if at all, was due and payable, how was it arrived at, and what was the understanding between the parties.

10 It is well settled that while considering the grant of leave, the grounds on which interference with the order of acquittal would be justified, need to be kept in mind. After considering the facts of the cases and the evidence adduced during the trials, I am of the opinion that in none of the cases, it would be possible to hold the accused guilty of the alleged offences.

11 Grant of leave, therefore, would be futile.

12 Leave refused.

13 The applications are rejected.

(ABHAY M. THIPSAY, J.)