

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Criminal Application (APPA) No. 136 of 2016

in

Criminal Appeal No. of 2016

Dilip s/o Kesharao Chaukade ..VS.. Mr. Abdul Hanif @ Malkahan Abdul Gani.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. R.R. Vyas, advocate for applicant.

CORAM : N.W. SAMBRE, J.

DATED : 20th JULY, 2016.

The present application for grant of leave to file appeal is by the original complainant.

The Summary Criminal Case No.1486/2013 came to be rejected resulting into acquittal of the respondent-accused vide order dated 29th January, 2016 passed by the Judicial Magistrate, First Class, Court No. 2, Amravati.

It is the case of the complainant-applicant that upon the request for hand loan an amount of Rs. 80,000/- was given to the accused on 4th February, 2013 against the security of a cheque drawn on Oriental Bank of Commerce.

It is claimed that the said cheque was dishonoured resulting into filing of the complaint.

In support of claim, the applicant-complainant examined himself at Exh. 38.

The learned Magistrate after considering the evidence particularly the presumption under Section 118 and 139 of the Negotiable Instruments Act ordered acquittal.

While seeking grant of leave, Mr. Vyas, the learned counsel for the applicant, made two fold submissions -- (a) that the court below has misunderstood the provisions

of Section 118 and 139 of the Negotiable Instruments Act, particularly in the matter of rebutting the presumption and the fact that the amount of loan was not disputed by the accused in the reply to the notice under section 138 of N.I. Act.

The above referred submissions if are analysed, it is required to be noted that the Magistrate has dealt with the issue of presumption under section 118 and 139 of the Negotiable Instruments Act as is reflected in para 16 and 17 of the judgment of the learned Magistrate. The Magistrate considered the issue as regards the receipt of the cheque in discharge of whole or part of the debt and the rebuttal of presumption thereof.

What could be inferred from the evidence that is brought on record is the present applicant was unable to discharge his burden as regards the receipt of the cheque towards the payment of lawful debt either in part or in entirety from the accused.

Apart from above, it is required to be taken note of the fact that there are hardly any document to infer the loan transaction between the parties.

It was for the present applicant to prove that the cheque was issued for the legally enforceable debt.

In my opinion, the reasons given by the learned Magistrate for acquitting the accused and dismissing the complaint appear to be germane for the cause.

In view thereof, no case for grant of leave is made out. The application fails and as such is rejected.

JUDGE

CERTIFICATE

“I certify that this Judgment uploaded is a true and correct copy of original signed Order.”

Uploaded by : R.B. Hirekhan.
P.A.

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