

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

Criminal Application (APPA) No. 809 of 2012
in
Criminal Appeal No. of 2016

Jayashri Narendra Kale ..VS.. Prmod Natthuji Wagh and another.

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

Court's or Judge's orders

Mr. M.P. Kakriya, advocate for applicant.
Mr. S.S.Shingane, advocate for respondent no.1.
Mr. J.Y. Ghurde, APP for respondent no.2.

CORAM : N.W. SAMBRE, J.
DATED : 20th JULY, 2016.

The Judicial Magistrate, First Class, Tiosa vide judgment and order dated 9th July, 2012 exercising the powers under section 255(1) of Code of Criminal Procedure acquitted the respondent-accused of an offence punishable under section 138 of the Negotiable Instruments Act. As such, the present application for grant of leave to file appeal.

Heard Mr. Manoj Kariya, the learned counsel for the applicant. He placed reliance upon the evidence of the complainant and her husband who were examined as C.W.1 and C.W.2. He would try to impress upon the Court that the presumption under section 118 and 139 of the Negotiable Instruments Act could have been appreciated by the learned trial court in its true perspective. Shri Kariya then would urge that the transaction in present case was of hand loan and the evidence of C.W. 2 have to be accepted in its totality. According to him, the leave needs to be granted.

With the assistance of Mr. Kariya, I have perused the judgment of acquittal and the observations made by the learned Magistrate.

Perusal of the judgment and the observations depicts that the learned Magistrate was aware of the presumption under section 118 and 139 of the Negotiable Instruments Act and in the said background has proceeded to consider the evidence of the complainant and her husband who are examined as C.W.1 and C.W.2.

The complainant has in clear terms stated that the transaction in question (loan) was entered into between the husband of the complainant i.e. C.W. 2 and the respondent accused. According to her, she is not aware of the date and nature of transaction but knew the fact that the cheque in question was issued towards the guarantee of loan. She would then state that the cheque is filled in by her husband C.W.2.

The scrutiny of the evidence of C.W. 2 reveals that the cheque was filled in by him and the said fact was not disclosed either in the notice or in the complaint. He then claim that the cheque was issued for the purpose of security. The examination of the said witness C.W.2 was considered to be for filling in lacuna which was caused because of the incomplete narration of evidence by the complainant C.W.1. Thus, the above referred inference as is drawn by the learned Magistrate while acquitting the respondent accused, in my opinion, is based on the analysis of the evidence of the complainant's witness i.e. C.W. 1 and 2.

In the above background, 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.”

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P.A.

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