

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

9 CRIMINAL APPLICATION NO. 2218 OF 2016

VITTHAL S/O. SHRIPATRAO SONWANE

VERSUS

UTTRESHWAR BABURAO DESHMUKH

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Advocate for Applicant : Mr. G. R. Nagargoje

Advocate for Respondents: Mr. R. P. Bhumkar

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CORAM : K.K. SONAWANE, J.

DATED : 24TH JULY, 2017.

Order :-

Heard learned counsel for the applicant and the learned counsel for the respondent. I have also perused the record and proceedings as well as the relevant documents produced on record. The applicant seeks leave under section 378 (4) of the Code of Criminal Procedure, 1973 (in short, "Cr.P.C.") to present an appeal against the impugned Judgment and Order of acquittal recorded by the learned trial Court in Summary Criminal Case No. 31 of 2013 for the offence punishable under section 138 of the Negotiable Instruments Act, 1881 (Here-in-after, referred to as 'N.I.Act', for short).

2. According to complainant, he has cordial relation with the respondent-accused and both were employed in the department of State Transport Corporation. It has been alleged that, the respondent-accused approached to the complainant on 4th August, 2012 and seeks for rendering financial assistance for the purpose of business of his son. In view of cordial relations, complainant paid Rs.5,00,000/- (Rs. Five Lac Only) to the respondent as a hand-loan. It was agreed that, the hand loan was to be repaid within a period of two months, but the complainant did not receive hand loan amount from the respondent. Eventually, respondent-accused issued a cheque of Rs.5,00,000/- (Rs. Five Lac Only) in favour of complainant for refund of hand-loan amount. The complainant deposited the impugned cheque in the State Transport Corporation Bank Limited, Osmanabad. But the cheque was dis-honoured for '*lack of sufficient funds*'. Thereafter, the complainant issued a legal notice on 17-12-2012. But the accused did not refund the amount. Eventually, complainant filed present complaint for penal action under section 138 of N.I.Act against the respondent for dis-honour of cheque issued in favour of complainant to discharge the monetary liability of his debt.

3. Both The complainant and the respondent-accused have adduced their evidence before the learned trial Court.

4. It was the defence of respondent-accused that he had obtained the hand loan amount of Rs.50,000/- (Rs. Fifty Thousand Only) from the complainant in the year 2007 for marriage ceremony of his daughter. He paid the monthly interest amount of Rs.2,500/- (Rs. Two Thousand Five Hundred Only) regularly to the complainant. Thereafter, in the year 2012, he refunded the entire amount of hand loan worth Rs. 50,000/- obtained from the complainant. At the time of procuring hand loan of Rs.50,000/- (Rs. Fifty Thousand Only), respondent-accused issued the blank cheque of his signature in favour of complainant in lieu of security. After repayment of loan amount, respondent-accused demanded the blank cheque which was given to the complainant for security purpose. But the complainant, on one or another pretext, did not return the cheque and mis-use the same by filing the present complaint.

5. The learned trial Court appreciated the entire facts and circumstances of the case on record and arrived at the conclusion that complainant failed to prove entire ingredients of the section 138 of the N.I.Act beyond all reasonable doubts, and ultimately, the learned trial Court acquitted the respondent-accused for the charges pitted against him.

6. Being dis-satisfied with the findings expressed by the learned trial Court, complainant is intending to present an appeal

to ventilate his grievance in the Appellate Forum. Therefore, complainant seeks leave under section 378 (4) of the Cr.P.C. for permission to present appeal before the Appellate Forum for redressal of his grievances.

7. I have heard submissions of both sides carefully and also verified the relevant documents produced on record. Admittedly, there was a money transaction occurred in between the complainant and respondent-accused, resulting into issuance of impugned cheque by the respondent-accused in favour of complainant. According to complainant, the cheque was issued by the respondent-accused for discharge of his monetary liability towards hand-loan amount of Rs.5,00,000/- (Rs. Five Lac Only) paid by the complainant in the year 2012; Whereas, the respondent-accused came forwarded with specific defence that, he had issued blank cheque of his signature in lieu of security to the complainant for the repayment of hand loan of Rs.50,000/- (Rs. Fifty Thousand Only), which was procured by him in the year 2007. Admittedly, it is not put into controversy that the impugned cheque was owned by the respondent-accused and it was presented in the bank by the complainant for encashment of amount being holder of the cheque. It is also not denied that the same was dishonour for "lack of sufficient funds". Therefore, in view of Section 118 read with Section 136 of the N.I.Act, the legal presumption would play an important role in this matter.

However, all these issues are required to be considered in detail hearing of appeal on merit. I find that the evidence adduced on record is required to be re-appreciated to determine the controversy in this matter and for that purpose it would imperative to accord the leave under Section 378 (4) of the Cr.P.C. in favour of complainant. In case opportunity is not granted to the complainant to ventilate grievances by filing an appeal, it would cause injustice and prejudice to him. Moreover, the matter in issue as to whether the impugned cheque was received by the complainant in lieu of security or whether it was given by the respondent-accused for the discharge of legal liability is also required to be ascertained after examination of oral as well as documentary evidence brought on record. Therefore, I do not find any impediment to accord the leave.

8. Hence, the leave to present appeal against the impugned Judgment and Order of acquittal of respondent-accused dated 17-02-2016, recorded by the learned trial Court in Summary Case No. 31 of 2013, is hereby granted. The application is allowed in terms of prayer clause 'B' of the application. Registry to take requisite steps for further process. After registration of appeal, same be listed for adjudication on it's merit.

[K. K. SONAWANE]
JUDGE

rrd.