

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

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and Registrar's orders

Court's or Judge's orders

CRIMINAL APPLICATION NO. 2805 OF 2017

PANDURANG SHITALPRASAD TIWARI
VERSUS
BAPU MASAJI SONWANE

...
Advocate for Applicants : Mr. Bayas Anandsingh
Advocate for Respondent : Mr. G. G. Suryawanshi.

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CORAM : V.L. ACHLIYA, J.
Dated: JUNE 13, 2017
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Applicant has taken out this application seeking leave to file appeal as against the judgment and order dated 1st October, 2016 delivered in S.T.C.C. No.2704/2014 by the J.M.F.C., Latur. By the impugned judgment, the trial Court has acquitted the accused for the offence punishable under Section 138 of the Negotiable Instruments Act.

2. Heard learned Counsel for the applicant – complainant and respondent – accused. Perused the impugned judgment and order passed by the trial Court as well as copies of the depositions

tendered during the course of hearing by learned Counsel for respondent.

3. The learned Counsel for the applicant strenuously contended that the judgment and order of the trial Court is perverse and not sustainable in law. He submits that the accused has admitted issuance of cheque in question to the complainant and therefore, presumption exists in favour of issuance of cheque in question for discharge of legal liability or debt. He submits that accused has failed to rebut the presumption. It is contended that the trial Court has given importance to the diary produced by the accused and the testimony of witness examined in defence of accused.

4. On the other hand, learned Counsel for the respondent – accused supported the judgment and order passed by the trial Court. Learned Counsel for respondent pointed out that the respondent – accused has taken a specific defence that the complainant indulges into money lending business without any valid licence. He used to advance loan to needy persons at exorbitant rate of interest. He used to obtain cheque towards security of the loan

advanced. The cheque to be returned on payment of amount. The accused has repaid the amount @ Rs.200/- per day and entries to that effect have been taken in the diary maintained by the accused. The complainant and his representative have signed each of the entry in acknowledgement of receipt of part payment. As against amount of Rs.20,000/- taken as a loan, accused has paid Rs.34,500/-. In spite of making such huge payment, the complainant has misused the cheque which was obtained as security. He submits that accused has stepped into witness box and deposed as per the defence and also examined other witnesses. On due consideration of the evidence, the trial Court has reached to the conclusion that the accused has failed to prove that the cheque was issued in discharge of legal liability/debt.

5. In order to appreciate the submissions advanced, I have perused the impugned judgment and order as also copies of the depositions made available during course of hearing. In my view, the judgment and order passed by the trial Court is well reasoned and there is absolutely no scope for interference in

exercise of appellate jurisdiction. It is pertinent to note that the trial Court has observed in the judgment that, as the accused has admitted issuance of cheque, the entire burden shifts upon the accused to rebut the presumption. The trial Court has minutely analyzed the evidence and defence of the accused and, thereafter arrived at a conclusion that the accused has established his defence and rebutted the presumption. In my view, the reasons and findings recorded by the trial Court are cogent, consistent and based upon due appreciation of the evidence. The view taken by the trial Court is a possible view in the matter. There is absolutely no perversity in the judgment and order of the trial Court. The complainant has admitted in his cross-examination that some of the entries appearing in the diary bear his signature. Besides the testimony of accused, the testimony of two other witnesses examined in defence by the accused also inspire full confidence. In this view, no case is made out to entertain the application and grant leave to file appeal against the impugned judgment and order. I am, therefore, inclined to reject the application seeking leave to file appeal.

6. Accordingly, application is rejected. The certified copy of the depositions is taken on record and kept with the proceedings.

(V.L. ACHLIYA,J)

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