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

CRIMINAL APPLICATION NO.3225 OF 2016

Kantilal Ratanlal Chavan … Applicant

VERSUS

Dudhnath Ramdas Chavan … Respondent

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Mr H. P. Jadhav, Adv h/f Mr A. K. Tiwari, Advocate for the applicnt
Mr Abhishek G. Kulkarni, APP for respondent/State

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CORAM : A. M. DHAVALE, J.
DATE : 22ND SEPTEMBER, 2017.

ORDER:

1. By this application u/s 378(4) of Cr.P.C. the applicant seeks leave to file appeal against the order of acquittal passed by ld. JMFC, Jt. Court, Aurangabad in SCC No. 10173/2014 for the offence punishable u/s 138 of the NI Act.

2. Heard Learned advocate Shri H. P. Jadhav h/f Mr A. K. Tiwari for the applicant and Mr Abhishek Kulkarni, ld. advocate for respondent.

3. As per complaint, the complainant was a landlord and the accused was his tenant for sometime about 8 to 10 years before the incident. The accused is a sculptor, who makes idols of Shri. Ganpati, Shri. Mahalaxmi and goddess. The complainant and accused were having cordial relations. The accused demanded hand loan of Rs.8.50 lakhs from the complainant and considering his need and

relations between them, the complainant advanced him Rs. 8.50 lakhs on 01.07.2014 in presence of one Pratapsingh Parihar. The accused assured to refund the said amount within two months. As he did not refund the amount, the complainant repeatedly made request. Then the accused issued cheque of Rs. 8.50 lakhs dt.07.10.2014 drawn on saving account of the accused in HDFC Bank. When the said cheque was presented by the complainant on 07.10.2014, it was dishonoured on the ground that 'account was closed'. The complainant issued demand notice by RPAD dt. 14.10.2014. It was served on the accused on 17.10.2014, but he did not comply with the same. Hence the complaint came to be filed on 02.11.2014. The process was issued u/s 204 Cr.P.C. Particulars were framed below Exh. 16. The accused pleaded not guilty. The complainant has examined himself and two witnesses and produced the documents. The defence of the accused is that he had not received so much amount and the complainant had taken from him 10 cheques. The ld. trial Judge on merits acquitted the accused holding that existence of legally enforceable debt was not established.

4. Ld. Adv. Shri. H.P. Jadhav h/f Mr Tiwari argued that, the accused has admitted his liability but disputed the amount. The payment of cash of Rs. 8.50 lakhs is proved by the complainant by examining two witnesses who have supported him. The accused has not replied the demand notice. The complainant has produced two sale deeds to show that he had financial capacity to make such payment. The accused has not taken any specific defence. Hence, the Judgment of the trial Court needs to be set aside. Hence the appeal be admitted.

5. Ld. advocate Shri. Abhishek Kulkarni supported the judgment of the trial court. He pointed out that no document was taken by the complainant at the time of the alleged transaction dt.01.07.2014. The relations between the complainant and the accused were not so close that the complainant could have advanced him such a huge amount without any security. The evidence of the complainant is not probable. The accused was not in need of such a huge amount. The complainant had no financial capacity to make such payment. Hence, the trial court has rightly disbelieved the complainant's evidence. Hence, appeal be not admitted.

6. After hearing ld advocates, I find that the complainant had sold some properties and might be having some funds with him but his relations with the accused were not so close so as to advance him such a huge amount of Rs. 8.5 lakhs. This amount was allegedly advanced on 01.07.2014 in cash and the said payment is not by cheque, which is suspicious. The accused was permitted to use such amount for a period of three months. Considering the huge quantity of alleged loan, its interest would also be huge (i.e 9% p.a. interest for three months would be around Rs. 19,000/-). I do not find it natural that the complainant could have advanced such a huge amount without interest. It is also not acceptable that the amount of Rs. 8.5 lakhs was advanced on 01.07.2014 without any document and without issuance of any cheque and the accused thereafter issued cheque on 07.10.2014 when the complainant had no security or evidentiary document to prove the payment.

7. I find that, considering the status of the parties and the nature of transaction, the absence of any documentary material about

payment of amount will raise presumption u/s 114 which will nullify the presumption u/s 139 of NI Act. Hence, I hold that the view taken by the ld trial Judge that the existence of legally enforceable debt of Rs. 8.5 lakhs was not proved, is reasonable and probable view and it is not possible to interfere with the same. The Criminal Application deserves to be rejected. Hence, the following order.

ORDER

(i) The Criminal Application is rejected.

(ii) Leave to file appeal is refused.

[A. M. DHAVALE]
JUDGE

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