

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

Criminal Application No. 358 of 2013
in
Criminal Appeal No. 201 of 2014

(Ajay s/o. Sidhagopal Dubey...Vs.... Sanjay s/o. Marotrao Amle)

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

Court's or Judge's orders.

Mr. S.P. Deshpande, Counsel for respondent

CORAM : ROHIT B. DEO, J.

DATE : 16.08.2017.

Heard.

There is no appearance on behalf of the applicant/appellant. The counsel for the appellant has been consistently absent and on 17.4.2017 after noting the absence of the applicant, this Court directed that the matter be listed for dismissal in the week thereafter.

I do not, however, propose to dismiss the application seeking leave under Section 374(4) of the Criminal Procedure Code in default.

Perusal of the judgment of the learned Trial Court would reveal that a finding

of fact is recorded that the complainant has not proved that there was any existing liability towards the satisfaction of which the cheque was issued. The learned Judge has recorded a finding that the complainant was in no position to extent such a huge amount has hand loan. It has come on record that at the relevant time, the complainant himself had obtained a substantial loan from a financial institution and in the evidence the complainant admitted that he obtained the loan from the financial institution as he did not have the money. The Trial Court has taken due notice of the material on record that the amount of hand loan is not reflected in the income tax returns of the complainant. The Trial Court has further taken note of the fact that complainant did not even recollect the exact date or month in which the loan was allegedly extended to the accused. The accused has examined defence witness to probabilise his defence that the cheque in

question was not issued in favour of the complainant but was issued to one Kharkar. The said Kharkar has been examined as a defence witness and he has deposes that because he did not have bank account he handed over the cheque issued by the accused to the complainant to secure some credit amount due and payable by Kharkar to the complainant towards goods purchase.

The view taken by the learned Trial Court is an eminently plausible view. The view is certainly not perverse. I am not inclined to grant leave to appeal. The application for seeking leave to appeal is rejected.

The appeal is disposed of.

JUDGE