

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APPA) NO.335/2015

Ku. Nilima Shripatrao Sheware ..vs.. Sau. Alka Pravin Sheware & anr.

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. Kariya, Advocate for applicant.
Mr. A. A. Sambaray, Advocate for non applicant no.1.
Mr. N. B. Jawade, A.P.P. for non applicant no.2.

CORAM : V.M. DESHPANDE, J.

DATED : JULY 13, 2017

This is an application under Section 378 (4) of the Code of Criminal Procedure seeking leave to file appeal against the judgment and order of acquittal passed by the learned Judicial Magistrate First Class Court No. 28 at Nagpur in Summary Complaint Case No. 11142/2011 acquitting the non applicant no.1 of the offence punishable under Section 138 of the Negotiable Instruments Act.

Heard Mr. M. P. Kariya, learned counsel for the applicant-complainant, Mr. A. A. Sambaray, learned counsel for the non applicant no.1 and Mr. N. B. Jawade, A.P.P. for non applicant no.2.

The applicant and non applicant no.1 are the relatives. The non applicant no.1 is sister in law of the applicant. According to the complaint, in November-2010, non applicant no.1 demanded a hand loan of Rs.3,50,000/- from applicant. She gave Rs.1,45,000/- to

the non applicant in November-2010 and Rs.2,05,000/- in February and March, 2011. It is further the case of the complainant that the non applicant issued a cheque on 11.03.2011 for Rs.3,50,000/- drawn on Punjab National Bank, Dharampeth, Nagpur. However, the said was not honoured by the banker of the non applicant. Statutory notice was also issued but the payment was not made. Hence the complaint was filed.

As per the defence of the non applicant, her husband has misused the cheque by taking her signature by pressure. Therefore, she has given intimation to the bank. Her case is that at no point of time she has taken the amount and therefore she is not liable to make payment. The reason for dishonour of the cheque was "Stop Payment".

The learned trial Court has found, on appreciation of the evidence that a dispute was pending before a Family Court in between the non applicant and her husband who is the real brother of the complainant. The non applicant has filed copy of the FIR on record which is at Exh.-64. In my view, the Court below has correctly appreciated and recorded a finding that the relations between the non applicant and her husband were not cordial and disputes were pending.

The Court below has correctly recorded a finding that the complainant has failed to prove that there was good relation between her brother and his wife the non applicant-accused. The Court below has

found that no documents are filed on record that the complainant has given loan for purchase of the house property to the non applicant. On the contrary, the finding of the learned Magistrate is that the relations between non applicant-husband were not good and her bank account and cheque book was used by her husband.

In that view of the matter, the Court has recorded a finding that the complainant has failed to prove that the cheque in dispute was issued in discharge of his legal liability. No exception can be taken to the well reasoned order passed by the learned Magistrate. The application is, therefore, rejected. Consequently, the appeal also stands dismissed.

JUDGE