

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

CRIMINAL APPLICATION (APPA) NO.493 OF 2017

IN

CRIMINAL APPEAL NO..... OF 2017

Shri Johnson s/o Virendra Nandeshwar

..VS..

Shri Raj s/o Mulchand Paserkar

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

Court's or Judge's Order

.....
Shri Y.B. Mandpe, Counsel for the applicant.

CORAM : V.M. DESHPANDE, J.

DATED : AUGUST 3, 2017.

This is an application for condonation of delay in
filing criminal appeal against acquittal. Delay is of 53 days.

Apart from delay, I have heard learned counsel
Shri Y.B. Mandpe for the applicant/original complainant, on
merits also.

Cheque (Exhibit 24), which was issued by the
present non-applicant, was returned by his Banker for not
having sufficient funds. Resulting into, filing of the complaint.

According to the complainant, he gave Rs.1.00 lac
to the non-applicant by way of hand loan and in order to return
the said hand loan, the disputed cheque was issued in favour of
the complainant.

Primary burden is on the complainant that the
cheque, issued in his favour by the non-applicant, was in his

discharge of his legal liability. The question of rebuttal of presumption will come only after the complainant proves its case that the cheque was issued in discharge of legal liability.

Learned counsel Shri Y.B. Mandpe for the applicant fairly accepts that in the cross-examination of the complainant, the complainant though accepted that he is an Income Tax Payee and files Income Tax Returns, for the concerned year Income Tax Returns, which were filed with the Department, are not placed on record. Thus, the best possible evidence that was available with the complainant to show that the hand loan of Rs.1.00 lac was given to the non-applicant is withheld by the applicant. Learned Judge of the Court below, in my view, has not committed any mistake in reaching to the conclusion that the applicant has failed to prove its case that disputed cheque was issued in discharge of legal liability.

Hence, no case is made out for interference. The view taken by learned Judge of the Court below is not perverse and it is a plausible view. The criminal application is rejected.

JUDGE

!! BRW !!