

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

CRIMINAL APPLICATION [APPA] NO.525 OF 2014

[Asrar Khan [Asruddin Khan] .vs. M/s. Akshay Engineering Enterprises and one]

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

Court's or Judge's orders

CORAM : KUM. INDIRA JAIN, J.

DATED : APRIL 05, 2017.

By this application under section 378 (1) & (4) of the Code of Criminal Procedure, applicant-original complainant seeks leave to file an appeal against the judgment and order of acquittal dated 25.7.2014 passed by the learned Judicial Magistrate, First Class, Bhandara in Summary Criminal Case No.307/2012.

Heard Shri A.V. Muley, learned counsel for applicant and Shri R.N. Meshram, learned counsel for respondent no.1. Ms. T.H. Udeshi, learned A.P.P. is present for respondent no.2-State.

It is the case of complainant that in the second week of December-2011, he sold chain linked fencing to the accused for Rs.64,000/-. Accused issued a cheque of Rs.25,000/- towards part payment on the same day and for remaining amount of Rs.39,000/- cheque was issued by accused on 15.1.2012. The said cheque was presented by the complainant and it was dishonoured. Statutory notice was issued and since demand in notice was not complied, he filed a criminal case under Section

138 of the Negotiable Instruments Act.

Considering the evidence adduced by the complainant, Trial court came to the conclusion that cheque issued by accused was not in the discharge of legally enforceable debt. Trial court acquitted the accused of the charge punishable under section 138 of the Negotiable Instruments Act holding that complainant could not prove that the cheque was issued in the discharge of legally enforceable debt. So far as statutory notice, its service on the accused are concerned, findings were recorded in favour of the complainant.

Accused raised the defence that complainant is a money-lender. He lent money to him and cheques were issued as a security against the loan. It can be seen from the evidence of complainant that part payment of Rs.25,000/- was made by accused on the same day through a cheque. This fact is nowhere denied by the accused. Trial court observed that complainant did not file any document to show that transaction has taken place between the accused and complainant and it was impossible to believe that for such a huge amount of Rs.64,000/- no document was in existence. From the complaint, it can be seen that nowhere it is stated that the transaction was in writing. It was pertaining to sell of second hand chain linked fencing. Since the accused has not denied issuance of cheque of Rs.25,000/- as a part payment, this court finds that complainant has an

arguable case. Hence, application is allowed and leave to file an appeal is granted.

CRIMINAL APPEAL NO. OF 2017

Heard.

Admit.

Call R & P.

Shri Meshram, learned counsel waives notice for respondent no.1 and Ms. Udeshi, learned APP waives notice for respondent no.2.

JUDGE