

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

CRIMINAL APPEAL NO. 484 OF 2017

Kailas Radhakrushna Dhawale,
aged about 42 years,
Occupation Lender LIC No. 826,
Ro. Deulgaon Sakarsha,
Taluka Mehkar,
District Buldhana

....APPELLANT

Versus

Pralhad Ramchandra Bombatkar,
Aged Major, occ. Service,
R/o. Malipura, Jalgaon-Jamod,
District Buldhana

...RESPONDENT

Shri. P.B. Patil, Counsel for Appellant.
Shri. N.B. Kalwaghe, Counsel for respondent.

CORAM: **ROHIT B. DEO, J.**
DATE: **21st SEPTEMBER, 2017.**

ORAL JUDGMENT

The appellant has incorporated a prayer clause seeking leave under 378(4) of Criminal Procedure Code to challenge the judgment of acquittal in Criminal Case 937 of 2010 decided by the Judicial Magistrate First Class, Buldhana on 26.11.2012.

The record reveals that neither the appeal nor the prayer seeking leave is assigned registration number. The Registry to take appropriate

steps.

2 Heard Shri. P.B. Patil learned counsel for the applicant / appellant and Shri. N.B. Kalwaghe for respondent.

3 The learned Magistrate has recorded a finding that the cheque was indeed issued by accused in discharge of legal liability. However, the learned Magistrate has further recorded a finding that the cheque was not presented for encashment with any of the branches of the State Bank of India (SBI) and there is nothing on record to show that the State Bank of India with which the accused is banking, informed either the complainant or the Buldhana District Central Cooperative Bank that the cheque is dishonoured for failure of the accused to maintain sufficient funds in the account.

4 Perusal of paragraph 15 of the judgment impugned reveals that the cheque was presented by the complainant to the Buldhana District Central Cooperative Bank for encashment on 2.8.2010. The complainant has produced on record memorandum Exh. 25 which is issued by the Buldhana District Central Cooperative Bank. The learned Magistrate noticed that the cheque in question was drawn by the accused on State Bank of India, branch Jalgaon Jamod. However, there is absolutely nothing on record to show that the cheque was presented to any of the branches of State Bank of India. The

accused examined the Branch Officer of the SBI, branch Jalgaon Jamod at Exh. 62. The said officer has deposed that the accused is holding an account in the said branch. The officer states that neither the accused nor the complainant presented the cheque for encashment of Rs. 2,25,000/-. The learned Magistrate further noticed that the complainant has not shown that the cheque in question was presented in any other branch of the SBI.

5 In paragraph 16 of the judgment the learned Magistrate notes that although memorandum Exh. 25 is issued by the Buldhana District Central Cooperative Bank, the accused is not holding any account in that bank nor is the disputed cheque drawn on that bank. The learned Magistrate has recorded a finding of fact that the disputed cheque was never presented for encashment with SBI.

5 The judgment of acquittal is a possible or plausible view. The view taken by the learned Magistrate is certainly not perverse.

I see no reason to grant leave to appeal. The prayer seeking leave to appeal is rejected and consequently the appeal is dismissed.

JUDGE