

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO. 361 OF 2015**

Shri Mahendra Nandaram Pardeshi

....Applicant.

Vs.

Shrikant Keshav Karne & Anr.

....Respondents.

Mr. A.B. Kadam a/w Sujata Tambe for the Applicant.

Ms. Prabha Badadare for Respondent No.1.

Mr. A.R. Kapadnis, APP for the Respondent-State.

CORAM : A. S. GADKARI, J.

DATE : 9th APRIL, 2018.

P.C.:-

This is an Application under Section 378 (4) for leave to file Appeal against the Judgment and Order dated 7th April, 2015 passed in S.C.C. No. 0406643 of 2013, by the learned Judicial Magistrate, First Class, Pune thereby acquitting the Respondent No.1 from the offence punishable under Section 138 of Negotiable Instruments Act.

2 Heard the learned counsel for the Applicant, the learned counsel for the Respondent No.1 and the learned APP. Perused the record.

3 The evidence on record clearly reveals that, the Applicant has failed to prove the basic fact that, he had in fact advanced hand-loan to the Respondent No.1 by producing any document on record such as Promissory Note, Agreement, Bank Statement showing transfer from his account to the account of Respondent No.1 and/or Income Tax Return, thereby even remotely an inference can be drawn that, the Applicant had given hand-loan to the Respondent No.1. It is the categorical defence of the Respondent No.1 that, he had availed loan facility from the State Bank of India, and the Applicant was guarantor to the said loan. In order to re-compensate the Applicant against the damages, the cheque in question was obtained from the Respondent No.1 as security and the same has been misused by the Applicant by presenting it, which has been dishonoured.

4 As noted earlier, the evidence on record clearly indicates that the Applicant has failed to establish the basic fact of advancement of hand-loan to the Respondent No.1. The evidence on record further reveals that the Respondent No.1 is successful in rebutting the presumption as contemplated under Section 139 of the Negotiable Instruments Act.

5 After perusing the record, this Court is of the opinion that,
the view adopted by the Trial Court is a reasonable and probable view
in the facts and circumstances of the present case.

No case for grant of leave to file Appeal is made out.

6 Application is accordingly rejected.

(A.S. GADKARI, J.)