

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.323 OF 2014

PANKAJ ROBINSON

)...APPLICANT

V/s.

SUNIL KHANNA AND ANOTHER

)...RESPONDENTS

Mr.R.J.Baddam i/b. Mr.A.V.Chougule, Advocate for the Applicant.

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

CORAM : A. M. BADAR, J.

DATE : 4th JUNE 2018

P.C. :

1 Heard the learned advocate appearing for the applicant/original complainant. None appeared for respondent no.1 / original accused, despite service.

2 Acquittal of respondent no.1 is recorded by the learned trial Magistrate with a reason that the Income-Tax Returns of the complainant does not reflect the advancement of hand-loan, so also the fact that the cheque was for security of the amount

deposited by way of hand-loan. My attention is drawn to the receipt dated 1st March 2011 issued by respondent no.1/ original accused which reflects that the cheque for security was for Rs.18 lakh whereas, the subject cheque for which the complaint was filed, was only for Rs.3 lakh. This prima facie shows that the cheque for Rs.3 lakh was not given towards security for refund of hand-loan.

3 So far as reflectment of the amount of hand-loan in the record of the Income-Tax is concerned, the learned advocate for the applicant has rightly relied on the judgment of this court in the matter of Krishna P. Morajkar vs. Joe Ferrao & Another¹ wherein it has been held that it is impermissible to invoke provisions of Section 269SS of the Income-Tax Act for preventing a person from recovering the advance which he had made. In this view of the matter, the following order :

ORDER

i) Leave, as prayed, is granted.

ii) Appeal is admitted.

¹ CDJ 2013 BHC 1205

- iii) The application for leave to appeal be treated as Memo of Appeal and therefore suitable amendment be effected therein within a period of two weeks from today.
- iv) Issue fresh notice to respondents on admission of the appeal.
- v) The learned APP waives notice for respondent no.2/State.
- vi) Action under Section 390 of Code of Criminal Procedure be taken against the respondent no.1 before the trial court.

(A. M. BADAR, J.)