

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.340 OF 2014
(For Leave to Appeal – Private)

WITH

CRIMINAL APPLICATION NO.344 OF 2014
(For Leave to Appeal – Private)

Deepak Laxman Rane	...	Applicant
V/s.		
Jagannath Dattaram Parsekar & Anr.	...	Respondents

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Mr.P. R. Arjunwadkar, Advocate for the Applicant.

Mr.Ganesh K. Gole, Advocate for the Respondent No.1.

Mrs.M.R.Tidke, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 25th SEPTEMBER 2018.

P.C. :

1 These are applications for leave to appeal. The original complainant is aggrieved by impugned Judgment and Order acquitting the respondent No.1 of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

2 Heard both sides.

3 The applicant/original complainant had filed two separate complaints alleging the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 against the respondent No.1/original accused. *Prima facie*, it appears that respondent No.1/original accused stood as a guarantor for repayment of loan taken by Rameshwar Mane from Uco Bank. He had mortgaged his room No.1715 in Building No.24 of Abhudoya Nagar as a security for repayment of loan. Ultimately, the bank took steps for auctioning the mortgaged property under Securitization Act. At that stage, the present applicant stepped in. Evidence of P.W.No.4 Prakash Tawade, Bank Manager coupled with agreement for sale dated 17th July 2006, undertaking executed by the respondent/original accused, *prima facie*, demonstrates that it was the applicant/original complainant, who had repaid the loan taken by Rameshwar Mane for which the subject room was mortgaged. To crown this all, evidence of the respondent/accused itself shows that the present applicant had cleared the loan for which the room was mortgaged.

4 In this view of the matter, case for consideration is made out. Therefore, the Order :

ORDER

- (i) Leave, as prayed, is granted.
- (ii) Memos of applications for leave to appeal be considered as Memos of Appeals on effecting

necessary amendment. Leave to amend to that effect is granted.

- (iii) Admit.
- (iv) Issue notice to respondents.
- (v) Shri.Gole, the learned Counsel waives notice for the respondent No.1. The learned Additional Public Prosecutor waives notice for the respondent No.2/State.
- (vi) Call for Record and Proceedings.
- (vii) In the meanwhile, in lieu of action under Section 390 of the Code of Criminal Procedure, the respondent Nos.1 should execute P. R. Bond of Rs.15,000/- before the learned trial Court within a period of four weeks.

(A.M.BADAR J.)

Raju
Dattatraya
Gaikwad

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by Raju
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