

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

CRIMINAL APPLICATION NO. 246/2017

IN

CRIMINAL APPEAL NO. _____/2016

(Rajendra s/o Motiram Randhe ..Vs.. Tulshiram Deepaji Rathod)

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

Court's or Judge's orders.

Miss. S.M. Sarangpur, Advocate h/f Mrs. D.I. Charlewar for the appellant.
Mrs. S.S. Wandile, Advocate for the respondent.

CORAM: ROHIT B. DEO, J.

DATE: 28th FEBRUARY, 2018.

The applicant is seeking leave to appeal under Section 378 (4) of the Criminal Procedure Code to challenge the judgment and order dated 29-01-2016 rendered by the Judicial Magistrate, First Class, Telhara in Summary Criminal Case 1203/2004, by and under which, the respondent is acquitted of offence punishable under Section 138 of the Negotiable Instrument Act, 1881 ('Act' for short).

2. Heard Miss S.M. Sarangpur, Advocate h/f Mrs. D.I. Charlewar learned Counsel for the appellant and Mrs. S.S.Wandile, learned Counsel for the respondent.

3. The disputed cheque, according to the original complainant was issued by the accused towards discharge of

existing debt. The existing-debt was refund of hand loan of Rs. 60,000/-, is the recital in the complaint.

4. The learned Magistrate has recorded a finding that the complainant has not proved that the cheque was issued towards discharge of an existing debt or liability. The finding recorded is unexceptionable.

5. The version of the complainant is unbelievable. The version is that on 19-4-2004 the accused requested for hand loan of Rs. 60,000/-. This request was made in a meeting at Hiwarkhed which took place between 10.30 a.m to 11.00 a.m. The complainant paid the amount to the accused before noon on 19-4-2004. The accused immediately issued the disputed cheque of Rs. 60,000/- to the complainant on the same day and cheque was presented for encashment by the complainant between 1.30 pm. to 2.30 p.m. on the same day. In effect, the version of the complainant is that the loan amount was utilized by the complainant for an hour or so.

6. The unbelievable version of the complainant is rightly disbelieved by the learned Magistrate who has also noted that the complainant is a person below poverty line.

The claim of the complainant that he raised the amount of Rs. 60,000/- by selling Gold, needs to be noted only for outright rejection. There is no documentary evidence or ocular evidence to corroborate the version of the complainant that he paid the amount of Rs. 60,000/- to the accused in cash. The accused is a Gram Sevak and is also an Agriculturist. The complainant, on the other hand claims to be an agriculturist who admits that he is a below the poverty line card holder.

7. The version of the complainant is incredible, unbelievable and is rightly disbelieved by the learned Magistrate.

8. The application seeking leave is absolutely devoid of substance and is rejected.

RKN

JUDGE