

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

CRIMINAL APPLICATION (APPA) NO.649 OF 2017
(Sanjay Pralhadrao Kelkar ..vs.. Sau. Shivanganga Netaji Pinjarkar)

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

Court's or Judge's orders

Shri P.V. Navlani, Counsel for the applicant,
Shri M.P. Kariya, Counsel for the respondent.

CORAM : ROHIT B. DEO, J.
DATED : 04-05-2018

The applicant who is the original complainant in Regular Criminal Case 223/2013 is seeking leave to appeal challenging the judgment and order of acquittal dated 06-7-2017 rendered by the learned Judicial Magistrate First Class, Court 3, Amravati.

2. The applicant instituted complaint alleging that the accused committed offences punishable under Sections 417, 418, 420, 426, 427, 500, 506 and 511 of the IPC. The learned Magistrate was pleased to acquit the accused, *inter alia* recording a finding that the complainant failed to establish that the accused had an intention to cheat from the very inception of the agreement to sale the house.

3. Perusal of the complaint would reveal, that the version of the complainant is that the accused entered into an agreement to sale a plot admeasuring 1200

square feet to the complainant by and under a document styled as Isar Chithi dated 04-11-2009. It is averred in the complaint that although the accused was paid Rs.2,50,000/- as part consideration, and the complainant was ready and willing to pay the balance consideration of Rs.5,50,000/- to the accused, the accused refused to honour the terms and conditions of the Isar Chithi and thereby committed various offences under the provisions of the Indian Penal Code. It is further alleged in the complaint that the defence taken by the accused in the reply notice dated 24-4-2010 that the transaction was a money lending transaction, is defamatory and constitutes offence punishable under Section 500 of the Indian Penal Code.

4. Concededly, the civil suit instituted by the complainant seeking specific performance of the agreement is decreed and the appeal preferred by the accused challenging the said decree is pending before the learned District Judge. That apart, having given anxious consideration to the reasons recorded by the learned Magistrate for acquitting the accused, I do not see any reason to take a contrary view. The learned Magistrate has rightly observed that the dispute was essentially a civil dispute and that there is no specific averment in the complaint, much less evidence on record to demonstrate that at the very inception of the transaction the accused intended to cheat the complainant or that any

representation which was false to the knowledge of the accused was made at the inception in order to induce the complainant to part with the amount of Rs.2,50,000/-. The defence taken by the accused that the transaction was a money lending transaction can by no stretch of imagination considered to be defamatory.

5. The view taken by the learned Magistrate is not only a possible and plausible view, it is the only view which can be taken by a judicial mind in the teeth of the evidence on record.

6. No compelling case is demonstrated for grant of leave to appeal. The application seeking leave to appeal is rejected.

JUDGE

adgokar