

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

Criminal Application [APL] No.760 of 2018

Haji Kadir Husain Babla
vs.
Sunita Vishnu Prasad Mishra

*Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.*

Court's or Judge's Orders

*Shri A.K. Bhangde, Advocate for the Applicant-Appellant.
Shri Nayan Raut, Advocate for the Respondent.*

CORAM : S.B. SHUKRE, J.
DATE : 7th SEPTEMBER, 2018.

I have heard the learned Counsel for the appellant and the learned Counsel for the respondent.

It is seen that even though the knowledge about the appellant-accused being in custody of the allegedly lost cheque in question was acquired on 14/06/2013 by the respondent and that the respondent had also seen that this cheque was in damaged condition having been torn into two pieces, the respondent did not file any further report with the Police Station Imamwada, Nagpur. According to the respondent, she had never surrendered the custody of this cheque to anybody and certainly not to the appellant. This would indicate that whosoever acquired custody of this cheque would be holding the cheque

under unlawful custody. Then, at the time, when the cheque was allegedly lost, it appears that, it was intact and not damaged or otherwise a specific mention about this fact would have been made in the police complaint dated 08/09/2008. So, when the fact of the appellant being in custody of this cheque was discovered and it was also discovered that the cheque was in damaged condition, a complaint regarding tampering with the evidence could have also been made, but that has not been done by the respondent. In the complaint dated 08/09/2008, the respondent has vaguely stated that she lost (“गुम गया”) the cheque while travelling by a cycle-rickshaw and she maintains a meaningful silence about the manner in which the cheque was lost by her. The police complaint, at this stage, appears to be vague in nature.

These are the material aspects which emerge from the *prima facie* consideration of the record of the case, as forming part of the paper-book of this appeal and I am of the view that these aspects, not considered by the trial Court, would require consideration from this Court. The appeal, therefore, deserves to be admitted.

Admit.

The substantive sentence of imprisonment imposed upon the appellant is hereby suspended till final disposal of the appeal and till that time the appellant be released on bail on his furnishing a P.R. Bond of Rs.25,000/- (Rupees Twenty Five Thousand Only) together with one solvent surety in the like sum on the condition that the appellant shall deposit with the concerned Sessions Court an amount of Rs.50,000/- (Rupees Fifty Thousand Only) within sixty days from the date of the order.

The application is allowed.

Civil Application [APPP] No.1442/2018

In view of the order passed in APL No.760/2018, the application is disposed of.

JUDGE

**sandesh*