

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

CRIMINAL APPLICATION (APPA) NO.857/2018
Purushottam s/o Narayanrao Bhang
..VS..
Rajendra s/o Bhaskarrao Ninawe

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

Court's or Judge's Order

.....
Shri S.A. Bramhe, Counsel for the applicant.
Shri S.M. Khandewale, Counsel for the non-applicant.

CORAM : V.M. DESHPANDE, J.
DATED : DECEMBER 5, 2018.

1. Heard learned counsel Shri S.A. Bramhe for the applicant who seeks leave to file an appeal challenging judgment and order of acquittal dated 23.11.2017 passed by learned Judicial Magistrate First Class, Nagpur in Summary Criminal Case No.11517/2010 whereby learned Judge of the Court below acquitted the non-applicant for offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

2. Learned counsel Shri S.M. Khandewale for the non-applicant strongly opposes the present application.

3. Learned counsel Shri S.A. Bramhe for the applicant submits that this is a fit case wherein this

Court should bestow another thought to the reasoning supplemented by learned Judge of the Court below.

4. It would be useful to reproduce paragraph No.21 of the impugned judgment and the said is reproduced below:

“The complainant claimed that the accused has written on the back side of the cheque that “Payment made to Shri Purushottam Narayan Bhang on accused of return of an investment along with profit on the project of company at Mouza Zingabai Takli. Details as per agreement of cancellation” and the same is not disputed by the accused. Therefore, it is clear that the cheque (Exhibit 21) was issued by the accused to the complainant but subject to condition of cancellation of the agreement. However, the complainant in his cross examination admits that he wanted to executive cancellation agreement but he has not yet. Considering the above discussion, it is crystal clear that the legal liability in respect of the cheque (Exhibit 21) will arise on the cancellation of the agreement.”

5. From the aforesaid, it is crystal clear that the cheque was issued on a condition of cancellation of agreement and the said on the part of the applicant is not performed at all.

6. In that view of the matter, no case is made out. Leave is rejected. Consequently, the appeal is also dismissed.

7. The criminal application stands disposed of accordingly.

JUDGE

!! BRW !!

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