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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 98 OF 2017

Mr. Saleem Mohammad Nisar Shaikh	... Applicant
Vs.	
Mr. Ejaj Mohammad Khan and Anr.	... Respondents

Mr. A.S. Shitole i/b. Mr. S.S. Chaudhari for the Applicant.
Mr. Ajay A. Joshi for the Respondent.
Mr. Y.M. Nakhwa, APP for the Respondent – State.

CORAM: SMT. SADHANA S. JADHAV, J.

DATE : 30th SEPTEMBER 2019.

P.C. :

1 Heard the learned counsel for the applicant and the learned counsel for the respondent at length. This is an application seeking leave to appeal against the judgment and order passed by the 22nd Judicial Magistrate, First Class, Pune in Summary Criminal Case No.19132 of 2014, thereby acquitting the respondent for the offences punishable under section 138 of the Negotiable Instruments Act. It is the case of the complainant that in the year 2011, there was a sale transaction of a plot at Sr. No.1420 of 2011 on 10th May 2011 between the applicant, the accused

and one Mr. Hanif Akbar Hakim. That, in fact, the said amount was belonging to the accused. The sale deed was registered on 10th May 2011. According to the complainant, after some days, the accused had approached him seeking hand loan of Rs.10,00,000/- for investing in his scrap business. That, on 12th May 2011, the accused had paid Rs.5,50,000/- by cheque and before that on 11th May 2011 he had paid Rs.3,00,000/- by cheque and had paid Rs.4,50,000/- in cash to the accused.

2 The accused had purportedly issued a cheque on 14th August 2014 to the complainant in the sum of Rs.10,00,000/-. The said cheque was dishonoured on 14th August 2014 for want of sufficient funds in the said account. Thereafter, the applicant had issued a statutory notice under section 138 of the Negotiable Instruments Act to the complainant. The cheque was again dishonoured on 12th September 2014.

3 Perused the statutory notice. The date and year of demand of hand loan is not mentioned in the statutory notice. That, the complainant had no evidence to substantiate that the amount of Rs.4,50,000/- was paid in cash. After considering the niceties in the evidence coupled with the statement of the accused under section 313 of the Cr.P.C., the learned

Magistrate had acquitted the accused of offence punishable under section 138 of the Negotiable Instruments Act.

4 It is pertinent to note that in the statement under section 313 of Cr.P.C, the accused had specifically stated that after three years the complainant had expressed his displeasure about continuing with the ownership of the said land purchased on 10th May 2011 since there was no access road. He had requested the accused to purchase the said property and refund the amount paid by him towards purchase of the said land. In lieu of the said transaction the accused had given a cheque of Rs.10,00,000/-. However, the accused had failed to take any steps towards re-conveyance of the said land and that the said cheque had been misused. The accused could not re-convey the said land as the complainant had not taken any steps towards return of the said property.

5 In answer to Question No.4, the accused has stated as follows:-

“It is true. I had given said cheque for return of my plot which was purchased by accused. However, the accused has not retransferred the said plot in my name and misused disputed cheque”.

6 All this has to be read in consonance with the transaction between the complainant and the accused which clearly indicates that the sale transaction was dated 10th May 2011, money was paid on 11th May 2011 and 12th May 2011. The said transfer of money pertains to the sale transaction and not towards hand loan. In any case, there has been no evidence to show that the complainant had paid an amount of Rs.4,50,000/- in cash. After considering the evidence adduced by the complainant at the trial, the learned Magistrate has assigned justifiable reasons for acquitting the accused. In view of the above discussion, no interference is warranted in the judgment dated 6th December 2016 in Summary Criminal Case No.19132 of 2014 passed by the 22nd Judicial Magistrate, First Class, Pune. Hence, the application for leave to appeal is dismissed.

(SMT. SADHANA S. JADHAV, J)