

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

CRIMINAL APPLICATION (APPA) NO.14/2019

Dnyandeo s/o Daulatrao Sanap

..VS..

Sainath s/o Sudhakar Pawar

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

Court's or Judge's Order

.....
Shri A.J.Thakkar, Counsel for the applicant.

Shri S.V.Bhuyar, Counsel for the non-applicant.

CORAM : V.M.DESHPANDE, J.

DATED : FEBRUARY 7, 2019.

1. Heard learned counsel Shri A.J.Thakkar for the applicant and learned counsel Shri S.V.Bhuyar for the non-applicant.

2. By the present application, leave is sought for filing an appeal challenging judgment and order of acquittal passed by learned Magistrate, Chikhali, District Buldana in Summary Criminal Case No.566/2012 whereby learned Magistrate acquitted the non-applicant of offence under Section 138 of the Negotiable Instruments Act, 1881.

3. After hearing learned counsel for the parties and after perusing the impugned judgment, I see no reason to interfere with the impugned judgment inasmuch learned Magistrate found that the applicant could not demonstrate that he was having financial capacity to lend money to the tune of Rs.17,000/- to the non-applicant.

4. Learned counsel for the applicant invites my attention to last line of cross-examination of the applicant which is in the nature of suggestion given by the non-applicant.

5. The criminal Trial is always open for the accused persons to take as many defence. Merely because he took a defence, it is not sufficient to record a finding of guilt. It is cardinal principle of the criminal law that the prosecution has to prove its case.

6. In the present case, since the applicant miserably failed as noted by learned Magistrate that he was having capacity to lend the money, no case is made out for grant of leave to file the appeal.

7. The criminal application and leave to file the appeal stand rejected.

8. The criminal application is disposed of accordingly.

JUDGE

!! BRW !!

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