

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

CRIMINAL APPA NO. 147 OF 2020

Dr. Dilip Shankarrao Ghavade
..vs..
Ganesh Vasant Rao Ingale

AND

CRIMINAL APPA NO. 148 OF 2020

Dr. Dilip Shankarrao Ghavade
..vs..
Ganesh Vasant Rao Ingale

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

Court's or Judge's orders

Shri S.S. Dhengale, Advocate for applicant.

CORAM : VINAY JOSHI, J.
DATED : 22/12/2020

Heard.

2. These applications are arising out of two separate judgments in Summary Criminal Case No. 2640 of 2012 and 2642 of 2012 by which the same accused namely Ganesh Ingale has been acquitted. The complainant as well as accused in both complaint were same hence, the Trial Court considered the common evidence and recorded the order of acquittal on the same date by passing two separate judgments. Being aggrieved by the same the complainant has challenged both the order of acquittal by way of filing two separate appeals.

3. Learned Counsel for the applicant would submit

that learned Magistrate failed to appreciate the evidence on record as well as failed to consider the statutory presumption. Minute perusal of both the complaints and the impugned judgments disclose that issuance of both cheques tuning Rs.1,00,000/- and it's dishonor has not been disputed. The common defence is that the cheques were issued towards security which has been misused by creating a false story of hand-loan. Since the transaction in between the parties appears to be interlinked it was necessary to have co-joint reading of both the complaints.

4. In first complaint bearing S.C.C. No. 2640 of 2012, it is complainant's case that on 10.09.2012 the accused demanded hand-loan of Rs.1,00,000/- which was given in cash on the very day. The accused has issued cheque of Rs.1,00,000/- towards repayment on 12.10.2012. On said background, the second complaint S.C.C. No. 2642 of 2012 is to be read. In the said complaint it is pleaded that on 11.09.2012, the accused again demanded hand-loan of Rs.1,00,000/- which was also given on the very day in cash on which another cheque of Rs.1,00,000/- dated 16.10.2012 was issued. Learned Magistrate has considered the very improbability that when on 10.09.2012 without any reason hand-loan of Rs.1,00,000/- was given then it is not possible that on the very next day i.e. 11.09.2012 there would be another hand-loan of that amount. The defence has also challenged the financial capacity of the complainant to have such huge cash amount and to pay towards hand-loan without demonstration of extreme need.

5. At the time of grant of leave certainly it is open

for Court to see merits to the limited extent. The very purpose of this provision to weed out unmeritorious proceedings. The record indicates that the complainant has relied on 7/12 extract to show his potentials. Learned Magistrate has considered said aspect in paragraph 14 of the judgment and also by taking aid of certain admissions, came to the conclusion that complainant failed to establish that he was financially sound to give hand-loan. The accused has given probable explanation to lift the statutory presumption. The order of acquittal can not be termed as illegal or against the record or perverse. In the circumstance, the impugned judgments of acquittal is well justified hence, leave to appeal in both the application stands refused.

6. Both Criminal Applications stands disposed of.

JUDGE

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