

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

CRIMINAL APPLICATION (APPA) NO. 630/2019
IN
CRIMINAL APPEAL NO. _____/2019

Govind S/o Namdeoraoji Bhangre

-VERSUS-

Anil S/o Ajabrao Thakre

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

Court's or Judge's Orders

Shri B. W. Patil, Advocate for appellant/applicant.

Shri V. J. Dharaskar, Advocate for respondent.

CORAM : VINAY JOSHI, J.

DATE : JANUARY 07, 2020.

Heard.

2. The appellant – original complainant is seeking leave to file appeal in terms of Section 378(4) of the Code of Criminal Procedure. The appellant has initially filed Summery Criminal Case No. 24772/2011 against respondent/accused for commission of offence punishable under Section 138 of the Negotiable Instruments Act. It is appellant's contention that due to cordial family relations, he has given hand loan of Rs. 1,22,000/-

2

to the accused since he was in financial crunches for the period from June 2006 to December 2007. According to the appellant, he has collected said amount from various named person and given it to the accused. On 28.01.2008, cheque of Rs. 1,00,000/- on account maintained by the accused/respondent, handed over to the appellant for repaying the hand loan. Since the said cheque was dishonoured and the payment is not forthcoming despite receipt of demand notice, the complaint is filed.

3. The appellant/complainant has led evidence before the Trial Court. After appreciating the evidence, the learned Magistrate has acquitted accused on the ground that the complainant has failed to establish legally enforceable liability. The learned Magistrate has considered statutory presumption under Section 118 and 139 of the Negotiable Instruments Act and even having regard to the said presumption, held that the complainant has failed to establish legally enforceable debt.

3. With the assistance of the learned counsel, I have gone through the impugned judgment and part of evidence. It emerges that the learned Trial Court has considered the

3

financial capacity of complainant. There was no financial need to the accused. There was total absence of any sort of material to support the case of complainant. The learned Magistrate has noted that the respondent who is mason had allegedly borrowed the amount from other persons and then handed over to the accused is totally improbable. There was no documentary evidence to support said stand nor those persons were examined. The learned Magistrate correctly appreciated the evidence hence, it is not the case to grant leave to file appeal.

4. Leave is refused. Appeal stands disposed of.

JUDGE

Gohane.