

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

CRIMINAL APPLICATION (APPA) NO. 201 OF 2018
IN CRIMINAL APPEAL NO. OF 2018

(Kushal Kawaduji Singanjude vs. Ramnarayan Durgaprasad Agrawal (Kejadiwal))

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

Court's or Judge's orders.

Shri P.K. Mohta, Advocate for the applicant.
Shri Y.G. Maheshwari, Advocate for the non-
applicant.

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CORAM : PUSHPA V. GANEDIWALA, J.
JANUARY 25, 2021.

Heard Shri Mohta, learned counsel for
the applicant and Shri Maheshwari, learned Advocate
for the non-applicant.

2. The Criminal Appeal challenges the judgment of acquittal of the respondent for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, (hereinafter referred to as N.I. Act), passed by the Judicial Magistrate First Class, Mouda, in Summary Criminal Case No. 138 of 2011. The ground for acquitting the respondent is that the appellant has failed to prove the legally recoverable debt against the respondent. The appellant/ complainant states that the appellant

gave Rs.5,00,000/- (Rs. Five lakh) to the respondent for securing job in Apang Niwasi Vidyalaya, Bhandara. Accordingly, job was secured and the appellant has been given appointment letter. As the salary of the appellant was withheld, the appellant approached the respondent for refund of money. The respondent issued cheque of Rs. Five lakh, which came to be dishonoured and hence, the complainant filed a Complaint under Section 138 of the N.I. Act.

3. This Court in similarly situated facts, in the case of Suhas s/o Bhanudas Jadhav vs. Sachin s/o Murlidhar Tarkase & Anr., reported at (2016) 1 Mah. LJ 492, in paragraph 9, held as under :

“It cannot be said that when such act is unlawful in public service it would be lawful in private sector. Such acts are not in interest of society. No employer would appoint a person whom he will give salary if he is not competent. His Subordinates cannot indulge in such acts at the costs of the Employer. It is trite to suggest that a Manager who without letting Company know makes money while making appointments does not indulge in unlawful

act. This cannot be in interest of public life in society. It would be against public policy.”

4. Section 23 of the Indian Contract Act, 1872, speaks about what consideration and objects are lawful and what not. The illustration (f) of Section 23 of the Indian Contract Act, reads as under :

“(f) A promises to obtain for a B an employment in the public service, and B promises to pay 1,000 rupees to A. The agreement is void, as the consideration for it is unlawful.”

5. In the opinion of this Court, as the initial agreement itself is void for want of lawful consideration and object of the agreement and the judgment of the coordinate Bench of this Court is squarely applicable to the facts of this case, no case for leave is made. Hence, application is rejected. Consequently, Appeal is also rejected.

JUDGE

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