

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION (ALP) NO. 28 OF 2018

Mrs. (Dr.) Jayshree Shah	..Applicant
V/s.	
Mrs. Yasmina Naresh Chauhan	..Respondent

Ms. Jayshree Shah, Applicant in person.
Mr. N. B. Patil, APP for the Respondent-State

CORAM : NITIN W. SAMBRE, J.

DATED : 23rd September, 2022

P.C.:

1. The case of the applicant, who happens to be a complainant in a case initiated for the offence u/s. 138 of the Negotiable Instrument Act, the non-applicant/accused was given friendly loan of Rs.50,000/- as against which the cheque was issued, which was dishonoured.
2. The complaint came to be initiated based on the return memo dated 10/01/2009 issued by the bank. The cause of dishonour of cheque is shown to be insufficient funds.
3. The Court of Metropolitan Magistrate vide judgment dated 11/12/2014 directed acquittal of the non-applicant/accused, as such this application for grant of leave to appeal.
4. The contentions of the applicant who appears to be in-

person is, the metropolitan magistrate has misread the evidence and the pleadings. According to her, the acceptance of an amount of Rs.50,000/- is duly admitted and that being so the Court below ought to have inferred that the cheque which was issued and dishonoured was towards an admitted liability.

5. So as to substantiate her said claim for conviction of the non-applicant/accused, the applicant/complainant would urge that the non-applicant/accused given an admission that she has paid an amount of Rs.5,000/- as against the aforesaid liability.

6. As such, she would urge that the acquittal of the non-applicant / accused is based on completely erroneous findings.

7. I have appreciated the said submissions.

8. The complainant is justified in claiming that the non-applicant/accused has admitted receipt of an amount of Rs.50,000/-

9. However, in the cross examination of the applicant who happens to be the complainant before the Metropolitan Magistrate a categorical admission is given that the cheque was issued to the present applicant in the police station for an amount of Rs.50,000/- and recovery of Rs.5,000/- was made in the police station from the non-applicant/accused in favour of the

complainant.

10. As such, the Court of Metropolitan Magistrate was justified in recording the statement that the cheque was not issued towards admitted liability but was forcefully taken from the non-applicant/accused with the aid of the police.

11. The aforesaid admissions are not explained by the complainant.

12. That being so, the order of acquittal is quite justified.

13. No case of grant of leave is made out. Leave stands refused.

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(NITIN W. SAMBRE, J.)