

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

CRIMINAL APPLICATION (APPA) NO.404 OF 2022
IN
CRIMINAL APPEAL NO _____ OF 2022

Venubai wd/o Rajaram Zingre and anr.

Vs.

Jaipal P. Wanve

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

Court's or Judge's orders

Mr. H. M. Bobade, Advocate for applicants.

CORAM : AVINASH G. GHAROTE, J.

DATE : 10/06/2022

1. Heard Mr. Bobade, learned counsel for the applicants.

2. The applicants seek leave to file appeal against the judgment dated 18.02.2022 passed by the learned Judicial Magistrate First Class whereby the complaint under Section 138 of the Negotiable Instruments Act has been dismissed and the accused has been acquitted. A perusal of the impugned judgment would indicate that the original complainant (Rajaram Damaja Zingre - who is no more), claims to have lent a sum of Rs.3,50,000/- to accused Jaipal Wanve for the satisfaction for which a cheque bearing No. 058566 dated 04.04.2015 drawn on the Bhandra District Central Co-operative Bank, Lakhani Branch was issued in favour

of the complainant. Since the cheque was dishonoured after issuance of the notice complaint under Section 138 of the Negotiable Instruments Act was filed. The learned Judicial Magistrate First Class, found that the cheque in question, was not issued by the accused, but was issued by the Manager Rani Durgawati Girls' Hostel, Garada and therefore, on this count, since there was no liability of the said Rani Durgawati Girls' Hostel, Garada and so also the said entity was not made a party complaint has been dismissed by acquitting the accused. Though, Mr. Bobade, learned counsel for the applicant submits that the said cheque was issued at the instance of the accused, he being the Manager of the Rani Durgawati Girls' Hostel, Garada, it is equally true that the cheque has not been issued by the accused in his personal capacity for the satisfaction of the legal debt or liability as claimed by the complainant. There is admittedly no transaction whatsoever between the complainant and Rani Durgawati Girls' Hostel, Garada, in view of which, the complaint filed by the applicant against Jaipal Wanve as the sole accused was clearly not maintainable on the count that the cheque was not issued by him. Any cause for dishonour of the cheque would have accrued against Rani Durgawati Girls' Hostel, Garada, which admittedly has not been arrayed as an accused in the complaint filed by the applicant, in view of which, in my considered opinion, no fault can be found with the finding rendered by the learned Judicial Magistrate First Class that so far

as the present accused is concerned, there was no legal debt or liability on account of cheque in question not having been issued by him but having been issued by Rani Durgawati Girls' Hostel, Garada, and therefore, I do not find any infirmity in the judgment dated 18.02.2022, so as to grant leave. Insofar as the contention that the original complainant has passed away on 24.01.2022 (as it is contended by Mr. Bobade, learned counsel for the applicant who submits that the date mentioned in para 30 of the order which is 17.01.2022 is incorrect). In my considered opinion, nothing turns around it, as the legal position discussed above, does not change. It is only a case of flogging a *dead horse*, considering which, I am not inclined to grant the application. The same is accordingly rejected.

JUDGE

Sarkate