

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 2 OF 2022

RAMAKANT VISHWANATH PARALKAR

VERSUS

OMPRAKASH GOVINDRAO SAWALE

...

Advocate for Appellant : Mr. Tungar Nikhilesh K.

Advocate for Respondent : Mr. Londhe Avinash S.

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CORAM : KISHORE C. SANT, J.

DATE : 17th JANUARY 2023.

Per Court :

Heard. learned Advocate for the parties.

1. This is an application seeking leave to file appeal against acquittal recorded by the learned Judicial Magistrate First Class, Parbhani by the judgment and order dated 12.11.2021 in S.C.C. No.1246/2015. The learned Magistrate while recording acquittal has mainly considered that the complainant could not prove as to on what date exactly amount was paid to the accused and secondly that the complainant could not prove that he was having capacity to give the amount by way of hand loan.

2. The learned Advocate for the appellant pointed out that the learned trial Judge has considered that since the appellant had taken loan in 1991 i.e. almost 18 years prior to the said transaction and there was also a crop loan taken by him and therefore he has failed to show that he has capacity or ability to give amount by way of hand loan. Secondly the Court has very lightly dealt with the aspect of presumption under Section 118 and 139 of the Negotiable Instruments Act. There is no evidence in rebuttal or even a case made out by the accused rebutting such presumption. The Court on its own have discussed that since the complainant could not prove his capacity to give hand loan and therefore the presumption cannot be invoked. He submits that both these reasons are perverse and therefore the judgment rendered against law and calls for interference.

3. The learned Advocate for the respondent submits that the complainant could not give the dates on which the amount was given by way of hand loan to the accused and therefore the learned trial Court has rightly acquitted the accused.

4. Considering above, this Court finds that a case is made out for granting leave to file an appeal against acquittal. Hence the following order.

ORDER

- (i) The Criminal Application (ALP) is allowed.
- (ii) Leave is granted to file appeal against acquittal challenging the judgment and order dated 12.11.2021 passed by the learned JMFC, Parbhani in S.C.C. No. 1246/2015.
- (iii) Office to register the application as appeal. Appeal admitted.
- (iv) Call for Record and Proceedings.
- (v) Learned Advocate for the respondent waives notice on admission of appeal. After Record and Proceeding is received, the appellant is at liberty to move the appeal.

[KISHORE C. SANT, J.]

Najeeb.