

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

APPLICATION FOR LEAVE TO APPEAL NO. 55 OF 2023

Maruti Anappa Kambale	...Applicant
vs.	
Gangaram Apayya Kamble and Ors.	...Respondent

Mr. Anand S. Patil - Advocate for the Applicant
Mr. A. R. Kapadnis - APP for the Respondent No. 3-State

CORAM : S. M. MODAK, J.

DATE : 10th APRIL, 2023

P. C. :-

1. Heard learned Advocate for the Applicant-Complainant.
2. He was possessing certain lands belonging to the Respondent No. 1-father. Both have decided that the Applicant will pay certain amount towards consideration of that land and sale deed will be executed by respondent. The consideration was fixed of Rs. 1,10,000/-. It was also paid. However for some reason or other, the sale deed was not executed.
3. Instead of paying consideration to respondent no.1, Complainant paid the consideration to the accused no. 2-Chandrakant. When the question of refund has arisen accused no. 2 issued cheque in question in favour of the Complainant. As such

accused no. 1 has not drawn the cheque. He may be having some civil dispute with the Complainant. However both father and son were joined as the accused persons before the trial court so also in the present appeal.

4. The trial magistrate has answered the issue of the liability against the Applicant. I have read the relevant observations. Prima facie, I also feel that these observations are not correct. The trial court observed that why the Complainant has not taken any steps for execution of the sale deed. Trial Court overlooked the fact that when the parties have mutually decided to cancel the transaction and cheque in question was also issued, it is not proper to disbelieve the said theory. Hence good case for grant of special leave is made out.

5. As said above, it is only the Respondent No. 2 who can be prosecuted for the offence punishable under Section 138 of the Negotiable Instruments act. There are no other materials which are shown which warrants prosecution of the Respondent No. 1. So at this stage, the appeal can be admitted only against the Respondent No. 2 who is drawer of the cheque. Once record will be received, the complainant is at liberty to point out about involvement of

respondent no.1.Hence following order:

ORDER

- (i) Special leave is granted.
- (ii) Appeal is admitted for the offence punishable under Section 138 of the Negotiable Instruments Act only against the Respondent No. 2-Drawer.
- (iii) Application for leave to appeal is disposed of.

[S. M. MODAK, J.]