IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

APPLICATION FOR LEAVE TO APPEAL NO. 130 OF 2021

Ramdas Dadu Pujari ...Applicant
vs.
Ramchandra Balwant Salunke and Anr. ...Respondents

*****

Mr. S. M. Kharatmol - Advocate for the Applicant
None for the Respondent No. 1
Mr. H. J. Dedhia – APP for the State

*****

CORAM : S. M. MODAK, J.

DATE : 16th MARCH, 2023

P. C. :-

1. Heard learned Advocate for the Applicant. Though the Respondent No. 1 is served, today no one is present.

2. The Court of learned Metropolitan Magistrate, 73rd Court, Vikhroli, Mumbai as per judgment dated 31/03/2021 was pleased to acquit the Respondent No.1-accused for the offence punishable under Section 138 of the Negotiable Instruments Act.

3. The issue is about existence of the legally enforceable debt or liability by the Applicant. Other issues have been answered in favour of the Complainant. I have read the findings given by

learned Magistrate as to point no. 1. There was promissory note issued by the Respondent-accused. It is at Exh. 31. Friendly loan of Rs. 50,000/- was given to the Respondent-accused towards discharge of that liability, cheque is issued which was dishonoured and subsequently complaint was filed.

4. Learned Magistrate has considered the answers given by the Complainant in the cross-examination. He has filed cases against 10 to 12 persons. Certified copies of the judgment in Summary Case No. 5348 of 2005 was also filed on record.

5. In view of the above, on the basis of provision of the Maharashtra Money-Lending (Regulation) Act, 2014, the trial Magistrate has held that Complainant is dealing in money lending business and as such debt cannot be legally recoverable debt or liability as there is no money lending license.

6. Learned Advocate tried to contend that even though in the promissory note there is a reference of 18% interest, in the statutory notice he has not asked for interest. We have read the provisions of Section 13 of the Maharashtra Money-Lending (Regulation) Act, 2014 which says that decree cannot be passed in favour of the money lender until he holds money lending license.

The meaning of 'business of money lending' is given in Section 2 (3) of the said Act which says that 'the business of advancing loans whether in cash or kind and whether or not in connection with, or in addition to any other business'. Whereas meaning of 'loan' is given in Section 2 (13) of the said Act. "loan" means an advance of cash on interest but it does not include an advance exceeding to Rs. 3,00,000/-, if it is made on the basis of a negotiable instrument, promissory note is excluded. In this case, the Respondent-accused has executed promissory note. What is more important is contents of promissory note rather than what is stated in statutory notice.

7. Considering the above what more is required to infer that the Complainant has engaged in money lending business. He has not come with a case that he is holding license. So I do not find any error in the findings given by the trial Magistrate. No case for grant of special leave is made out. Hence application is dismissed.

[S. M. MODAK, J.]