



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 31 OF 2024

Siraj Khan Shabbir Khan

VERSUS

Imran Mansoor Shaikh And Another

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Mr. Farooqui Kamaloddin Nuruddin, Advocate for Applicant

Mr. S.B. Jadhav, APP for Respondent No.2

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 08th JULY, 2024

ORDER :

1. By this application filed under Section 378(4) of the Code of Criminal Procedure, applicant/original complainant seeks leave to file criminal appeal against the judgment and order dated 23.01.2024, passed by learned Additional Chief Judicial Magistrate, Court No.2, Aurangabad in S.C.C. No.6958 of 2018, thereby acquitting respondent/accused under section 138 of the Negotiable Instruments Act.

2. Complaint was filed by complainant alleging that accused was doing centring business and he had cordial and friendly relations with complainant. Accused was in need of money for purchasing the centring material and for that purpose, on 23.12.2017, he obtained hand lone of Rs.3,00,000/- from him, which he promised to repay within three months. On the same day, agreement to that effect was

also executed. After three months, complainant approached and requested accused to repay the hand loan. Accused issued cheque of Rs.2,25,000/- dated 24.07.2018 bearing no.000001 drawn on Bombay Mercantile Co-Operative Bank, Branch Juna Bazar, Aurangabad. On presentation, the cheque was dishonoured as Drawer's signature differed. On 27.07.2018, complainant issued R.P.A.D. notice to accused, which was returned with remark 'intimated and unclaimed'. Hence, he filed private complaint.

3. Trial Court after recording evidence and hearing the parties, acquitted the accused. Hence, this application.

4. Heard learned advocate for applicant and learned APP for State. Though served, none appears for respondent no.1. Perused the documents placed on record including impugned judgment and order of acquittal.

5. Perusal of the impugned judgment reveals that as per the contention of complainant, there was an agreement in which it is mentioned that he had handed over the amount of Rs.3,00,000/- to the accused, which was to be returned within three months and for repayment of the said amount, accused has given the cheque of Rs.2,25,000/-, which on presentation was dishonoured.

6. From the documents placed on record, it is clear that at the time of giving hand loan, complainant was doing tailoring work and was earning Rs.500/- per day. Therefore, it is difficult to believe that he could give hand loan of Rs.3,00,000/- to the accused. As per the case of complainant, he has given hand loan of Rs.3,00,000/-, which accused agreed to return in three months. Agreement to that effect was executed by accused. Thereafter, when complainant demanded money back, cheque of Rs.2,25,000/- was given by the accused. Complainant has nowhere claimed that at the time of giving of cheque, accused assured to give remaining amount. Trial Court has observed that the agreement was not produced by complainant at the first opportunity i.e. along with complaint. It was also not produced along with evidence affidavit of complainant. The agreement was placed on record only after complainant's cross examination was over. The agreement is marked only for the purposes of identification by the trial Court and it was rightly not relied upon and/or believed by the trial Court. It therefore appears that complainant has failed to prove his case.

7. Trial Court has properly appreciated the evidence on record and has assigned cogent reasons while acquitting the accused. No case is made out by applicant to interfere in the impugned judgment and order of acquittal. It is not a fit case to grant leave to file appeal. Application for leave to appeal is therefore rejected.

[NITIN B. SURYAWANSHI]
JUDGE