



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 105 OF 2024

Mohan Anandrao Kakade
VERSUS
Liyakat Ahmad Tamboli

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Mr. Dilip B. Rode, Advocate for Applicant
Mr. Z.H. Farooqui, Advocate h/f Mr. N.V. Gaware Patil,
Advocate for Respondent
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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 18th SEPTEMBER, 2024

ORDER :

1. By this application filed under section 378(4) of the Code of Criminal Procedure, applicant/original complainant, seeks leave to file appeal against the judgment and order of acquittal dated 30.03.2024 passed by learned Judicial Magistrate, First Class, Court No.2, Shrigonda in S.C.C. No.591 of 2019.

2. Applicant filed complaint contending that there was a sale transaction of land Gat No.674, belonging to Moinuddin Sajjanbhai Pathan, which was for sale. Applicant inspected the land and had shown willingness for purchasing the same. Sale transaction was decided at Rs.20,00,000/-, out of which Rs.5,00,000/- was paid by complainant to the accused in the

capacity of Moinuddin Sajjanbhai Pathan. However, the said transaction could not materialize within the stipulated time of three years. Therefore, complainant demanded the refund of earnest money. Since accused was mediator, he promised complainant to repay the earnest amount of Rs.5,00,000/- and issued cheque of the said amount to the complainant on 30.05.2019. The said cheque was bounced on presentation. Since on issuance of legal notice, no amount was paid. Hence, the complaint was filed. The trial Court after recording the evidence has acquitted the accused. Hence, the present application.

3. Heard learned advocate for applicant and learned advocate for respondent. Perused the grounds raised in the application memo, documents placed on record and the impugned judgment and order of acquittal.

4. It appears from the record that the complainant has failed to prove that on the date of issuance of the cheque, the accused owed to the complainant any amount. Trial Court has recorded the finding that there was no legally enforceable liability towards accused. There was no privity of contract between accused and complainant. Since the transaction was between Mohammad Pathan and the accused, there was no

occasion for the accused to issue cheque in favour of complainant.

5. The trial Court has rightly appreciated the evidence on record and has assigned cogent reasons while recording acquittal of the accused. View taken by the trial Court is a possible view, which is not liable to be interfered with while exercising jurisdiction under section 378 of the Code of Criminal Procedure. No case is made out by the applicant to interfere in the order impugned in the present application in the order impugned in the present application. Application being devoid of merit is dismissed.

[NITIN B. SURYAWANSHI]
JUDGE