



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 42 OF 2023

Sayyad Akhil Ahemad Mashayak

VERSUS

Mohammad Siddiq Md. Yusuf Shaikh

.....

Mr. Sushant B Choudhari, Advocate for Applicant
Mr. Prateek Jadhav h/f. Mr. S.N. Pagare, Advocate for the
respondent

.....

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 04th SEPTEMBER 2024

ORDER :

1. Applicant/original complainant has filed this application under Section 378(4) of Cr.P.C. seeking leave to file appeal against impugned judgment and order of acquittal passed by learned Joint Judicial Magistrate First Class, Osmanabad in S.C.C. No. 454 of 2017.

2. Applicant filed complaint under Section 138 of Negotiable Instruments Act against respondent/accused contending that he had given hand loan of Rs. 60,000/- to the accused. For repayment of said hand loan, accused had given cheque of the said amount of UCO Bank, when presented for

Bhagyawant Punde

encashment said cheque was bounced, hence, applicant issued notice to the accused. Though, notice was received by the accused, he did not reply the same. Hence, complaint was filed.

After recording evidence of the parties, Trial Court acquitted the accused. Hence, the present application.

3. Heard learned advocate for the applicant and learned advocate for the respondent. Perused the impugned judgment and documents placed on record.

4. On perusal of impugned judgment and documents placed on record it appears that applicant in his evidence has admitted that he is unable to state that when he had advanced hand loan to the accused and he was unable to state contentions of his affidavit of chief-examination. He has also admitted that he has agricultural land at village Shingoli bearing Gut No. 83 and he had sold plots from that land without having NA permission. He further admitted that he has sold plots to nephew of accused namely Ajhar Muktar Shaikh, brother of the accused namely Muktar Yusuf Shaikh and to the accused. He admitted that he had mortgaged said land from which plots were sold with Terna Nagri Co-operative Bank. He has also admitted that no one was present at the time of giving hand loan to the accused and

receiving disputed cheque.

Accused has produced revenue entries on record which show that applicant has sold same plot to two different persons. Considering the evidence on record and the admissions of applicant, the defence raised by accused appears to be probable and the same is rightly accepted by the Trial Court.

5. The view taken by the Trial Court is possible view. No case is made out by applicant to interfere in the impugned judgment and order of acquittal. Application being devoid of merit is dismissed.

[NITIN B. SURYAWANSHI, J.]