



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
CRIMINAL APPLICATION (APPA) NO. 497 OF 2024 IN
CRIMINAL APPEAL STAMP NO. 4126 OF 2024

Satish s/o Pramkumar Kohli vs Raju Hotchand Bhojwani

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. C.F. Bhagwani, counsel for the applicant.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 25/11/2024.

1. By this application, the appellant is seeking leave to prefer an appeal against the judgment and order of acquittal passed by the 13th Joint Civil Judge, Senior Division, and Additional Chief Judicial Magistrate (Special Court-138 and Negotiable Instruments Act), Nagpur.
2. The appellant is the original complainant, who filed the complaint under Section 138 of the Negotiable Instruments Act. The learned trial court though observed that the account statement shows that amount is received by him from the complainant, but there was no agreement in respect of charging any interest between the parties. The complainant is not a money lender therefore, the complainant has no right to charge any interest against the accused on the hand loan transactions, and therefore, the received amount needs to be deducted from the legal liability.
3. It is further observed by the Special Court that the complainant failed to prove the legally enforceable debt

against the accused and issuance of subject and legally enforceable debt by the accused. Thus the observation appears to be contradictory because, earlier the learned Special Court has observed that the accounts statement shows that the accused has received the amount. There was no other reason came before the Court as to why the said amount was transferred by the complainant with the account of the accused. In the light of the evidence, there was no other reason for the Court but to accept the contention that there was legal and enforceable debt, but contrary findings are recorded by the Special Court, which is pointed out by the learned counsel for the appellant.

4. In view of the above, learned counsel for the appellant has made out a case to grant leave. He has many arguable points in the present appeal. In view of that, the application for leave to file an appeal deserves to be allowed. Accordingly, I proceed to pass the following order.

a] Leave is granted to file the appeal.

b] The appeal be registered.

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1. On registration of appeal notice be issued to the respondent returnable after four weeks.

2. Appeal be listed before the Court after service of notice to the respondent.

[URMILA JOSHI-PHALKE, J.]