



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPA) NO. 931 OF 2023 IN
CRIMINAL APPEAL STAMP NO. 4971 OF 2023

Prashant s/o Atmaram Fate V/s Puja d/o Rajesh Kute

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

Court's or Judge's Order

Mrs. S.P. Giratkar, counsel for the applicant/appellant.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 15/03/2024.

1. By preferring this appeal, the appellant has challenged the order of acquittal passed by the Judicial Magistrate First Class, Court No.2 Akot in S.C.C. No. 782/2019, whereby the accused i.e. respondent is acquitted from the charge under Section 138 of the Negotiable Instruments Act, 1881.

2. Heard learned counsel for the appellant. She pointed out from the documents on record that there was a legal dischargeable debt and against the same, the respondent has issued the cheque which was deposited by the present applicant and it was dishonored.

3. The learned trial Court has acquitted the accused only because the memo is not proved by the complainant by examining the bank witness.

4. Learned counsel further submitted that on technical grounds, the learned trial Court has acquitted the accused and therefore, the interference is called for.

5. After hearing learned counsel for the applicant and after going through the impugned judgment as well as the complaint and the various documents filed on record, which prima-facie shows that there was a transaction between the present applicant and the non-applicant, the cheque was issued against the said transaction. The learned trial Court has also observed that various documents are filed on record. The notice issued by the complainant i.e. the applicant is received by the respondent and the amount is not paid. Thus, ingredients of the offence under Section 138 of the Negotiable Instruments Act, 1881 are prima-facie established. From the judgment, it reveals that the learned trial Court has acquitted the accused as the bank witness is not examined by the complainant. The complainant has pointed out that he has many arguable points in the present appeal.

6. In view of that, leave to file the appeal is granted.

7. The criminal application (APPA) No. 931/2023 is allowed.

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1. Heard.

2. Admit.

3. Call for record and proceedings.

4. The appeal be placed before the Court after filing of paper book.

[URMILA JOSHI-PHALKE, J.]