



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

CRIMINAL APPLICATION (APPA) NO.27/2023
IN
CRIMINAL APPEAL ST. NO.7035/2022

Mr. Ashok Shayambihari Agrawal

Vs.

Mr. Sharad Lalchand Modi and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri R.R. Vyas, Advocate for applicant
Shri Hunge, Advocate for respondents (through V.C.)

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 10/12/2024

. Present application is filed for grant of leave to prefer an appeal against acquittal.

2. Heard learned Counsel for the applicant who submitted that the applicant is the original complainant who has filed a complaint under Section 138 of the Negotiable Instruments Act and Section 420 of the Indian Penal Code. There was a business transaction between the present applicant and accused. Out of that, the cheque was issued by the accused, which was dishonored. After service of the notice also the accused has not repaid the amount and, therefore, he was constrained to file a complaint. Though the complainant has adduced evidence to show that the cheque was issued in discharged of legal and enforceable debt, the learned Trial Court has

acquitted the accused holding that the complainant has not examined the expert to prove the signature on the said cheque.

3. It is submitted that there was a legal and enforceable debt and cheque was issued in discharge of the said legal and enforceable debt. In view of Section 73 of the Indian Evidence Act, the Court can compare the same, but the Court has not compared the same and merely because the expert is not examined, acquitted the accused. He submitted that he has many arguable points in the present appeal. In view of that leave be granted.

4. Learned Counsel for the accused strongly opposed the said application and submitted that legal and enforceable debt is not proved by the complainant. In addition to that the expert is also not examined by the complainant, therefore, learned Trial Court rightly acquitted the accused and no grounds are made out for grant of leave.

5. After hearing both the sides and on perusal of the impugned judgment, the grounds raised by the learned Counsel for the applicant appears to be there. He has many arguable points in the present appeal. In view of that leave is to be granted. Accordingly, I proceed to pass following order:

ORDER

i) Leave is granted.

- ii) The Appeal be registered.
 - iii) After registration of the appeal, notice be issued to the respondents, returnable after four weeks.
6. The application stands disposed of.

JUDGE

Jayashree....