



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

CRIMINAL APPLICATION (APPA) NO. 1020 OF 2023
IN
CRIMINAL APPEAL STAMP NO. 6696 OF 2023

Utkranti Nagri Sahakari Patsanstha Maryadit, Jarud Vs Mr. Alim Kha Rahim Kha

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

Court's or Judge's Order

Mr. C.J. Dhumane, counsel for the applicant/appellant.

Mr. V.T. Deshpande, APP for the respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 14/08/2024.

1. By this application, the applicant, who is a financial institute, seeks leave to file an appeal against the acquittal in Summary Criminal Case No. 1490/2017.

2. Heard Mr. C.J. Dhumane, the learned counsel for the applicant, who submitted that the account extract is wrongly appreciated by the trial court, and it is held by the learned trial court by referring to the judgment of ***Laxmikant D. Naik Karmali Vs Santosh V. Naik [2006 (2) Bom. C.R. (Cri.) 830]***, that for the purpose of Section 138 of the Negotiable Instruments Act, 1881 (hereafter referred to 'N.I.Act'), the cheque should be towards the discharge of either purpose debt or part of debt. If the cheque is for more than the amount of the debt, Section 138 of the N.I. Act cannot be attracted. He submitted that the principal amount which was disbursed to the accused was Rs. 40,000/-, and thereafter the accused has not repaid the amount, and the interest was accrued therein,

which is Rs. 30,187/-. Thus, against the total due amount, the cheque was issued of Rs. 69,000/-, but the trial court has not considered the same and acquitted the accused on a wrong perception.

3. He submitted that he has many arguable points in the present appeal. In view of that, the leave is granted.

4. Learned counsel for the respondent strongly opposed the said application and submitted that the evidence which was adduced by the complainant itself is sufficient to show that the cheque was issued against the due amount, which was only Rs. 37,800/-, and the learned trial court has rightly appreciated the same. In view of that, the application deserves to be rejected.

5. After hearing learned counsel for the applicant and learned counsel for the respondent, perused the impugned judgment as well as the account extract and the evidence which was adduced before the learned trial court. At this stage, the submission made by the learned counsel for the applicant that the cheque was issued against the principal amount and the interest accrued therein is substantiated by the account extract.

6. Thus, the learned counsel for the appellant has pointed out that he has many arguable points in the present appeal. In view of that, leave is to be granted. Accordingly, I proceed to pass the following order:

- a] Leave is granted to prefer an appeal against the acquittal.
- b] The criminal application (APPA) No. 1020/2023 is **disposed of**. The appeal be registered.

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1. The criminal appeal can be disposed of at the admission stage.
2. Call for record and proceedings.
3. The appeal be placed before the Court after receipt of record and proceedings.

[URMILA JOSHI-PHALKE, J.]