



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

CRIMINAL APPLICATION (APPA) NO.1115 OF 2022

IN

CRIMINAL APPEAL NO.9771 OF 2022

(Jaibharat Oil Mill thr. its Prop. Shri Dhanraj s/o Radhakisan Tawari Vs. Shri Manish
s/o Surajmal Toshniwal)

CRIMINAL APPLICATION (APPA) NO.1116 OF 2022

IN

CRIMINAL APPEAL NO.9769 OF 2022

(Jaibharat Oil Mill thr. its Prop. Shri Dhanraj s/o Radhakisan Tawari Vs. Shri Manish
s/o Surajmal Toshniwal)

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

Court's or Judge's orders.

Mr. N. R. Bhishikar, Advocate for Applicant.
Mr. P. K. Mohta, Advocate for Non-Applicant.

CORAM: URMILA JOSHI PHALKE, J.

DATE: 5th SEPTEMBER, 2024.

1. Both the applications are filed by the applicant for grant of leave along with the appeal challenging the order of acquittal passed in SCC Nos.761/2015 and 762/2015.

2. Heard learned counsel Mr. Bhishikar for the applicant who pointed out from the cross-examination of the accused who examined himself in support of his defence that he has admitted that the complainant is the owner of Jai Bharat Oil Mill. He also admitted the transaction with the said Jai Bharat Oil Mill. He further invited my attention to the further cross-examination wherein the non-applicant has intended that he has issued eight cheques towards the

said transaction and it was decided that if he pays the amount through RTGS then the cheques issued in favour of the complainant to be cancelled. His further cross-examination shows that he admitted that on 17.02.2014 amount of Rs.7,84,610/- was duped from him to the complainant. The admission further shows that he has no documentary evidence to show that he has repaid the amount by RTGS. On the basis of this cross-examination the learned counsel submitted that the observation of the trial Court to the extent of there was no legal and enforceable debt and cheques were not issued in-discharge of the legal and enforceable debt is not sustainable. Thus, he pointed out that he has very arguable points in the present appeal, and therefore, leave is granted.

3. Learned counsel for the non-applicant strongly opposed the said application and submitted that the learned trial Court has rightly considered that the complainant was not holder in due course and it is a possible view taken by the trial Court and therefore, the application for grant of leave deserves to be rejected.

4. After hearing the learned counsel for the applicant and learned counsel for the non-applicant, perused the impugned judgment as well as the deposition of the accused from which the learned counsel for the applicant pointed out that he has admitted that some amount was due from him and also admitted that cheques were issued. The admission further shows that he has no documentary evidence to show that he has paid amount in

cash. Thus, from this cross-examination learned counsel for the applicant has made out a case for grant of leave, as he has many arguable points in the present appeal. In view of that, both these applications deserves to be allowed. Accordingly, I proceed to pass following order:

- i] Criminal Application Nos.1115/2022 and 1116/2022 are allowed. Leave is granted to the applicant to prefer an appeal.

CRIMINAL APPEAL STAMP NO.9771/2022 AND CRIMINAL APPEAL STAMP NO.9769/2022:

1. Appeals be registered.
2. Mr. P. K. Mohta, learned counsel waives service of notice on behalf of the respondent.
3. The appeals can be disposed of at the admission stage.
4. Call for record and proceedings from the trial court.
5. In the meantime, learned counsel for the appellant/applicant shall file private paper-book within four weeks.
6. Stand over after four weeks.

(URMILA JOSHI-PHALKE, J.)