

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO.925/2010

Vijaykumar S/o Jyotiramji Tapdia

Applicant

V E R S U S

Pandurang s/o Gyanba Surwase.

Respondent.

Shri V.R. Jain, Advocate for applicant.

Shri S.B. Bhapkar, Advocate for the respondent.

CORAM : SHRIHARI P. DAVARE, J.

DATE : 7 TH JULY, 2010

PER COURT :

1. Heard Mr. V. R. Jain, learned counsel for the applicant, as well as Mr. Bhapkar, learned counsel for the sole respondent.
2. This is an application preferred by the applicant (original complainant), seeking leave to file appeal against the judgment and order of acquittal dated 8.2.2010, rendered by 4th Judicial Magistrate First Class, Latur in STCC No.1641/2008, acquitting the respondent (original accused), for the offence under section 138 of Negotiable Instruments Act.
3. The respondent/original accused faced trial in STCC No. 1641/2008, for the offence punishable under section 138 of Negotiable

Instruments Act. In short, it is the case of the complainant that accused and complainant were having friendly relations with each other and both of them used to run grocery shop at Latur. Since, accused was in need of Rs.50,000/-, for the purpose of business, the complainant advanced hand loan of Rs. 50,000/- to him in March, 2008 for period of 2 months and accordingly, it is the case of the complainant that accused issued cheque dated 8.5.2008 for Rs. 50,000/- to the complainant towards the repayment thereof. The complainant presented said cheque on 26.5.2008, but same was returned unpaid, with the endorsement that "Payment stopped by the drawer". Thereafter, complainant issued demand notice on 7.6.2008 by RPAD and UPC and called upon the accused to make the payment of the said cheque. Said notice was replied by the accused through advocate. According to the complainant, accused failed to comply with the requisite notice, hence, after completing necessary formalities, complainant filed complaint against accused under section 138 of Negotiable Instruments Act. The defence of the accused as transpired from the cross examination of the complainant as well as statement of the accused under section 313 of the Code of Criminal Procedure Code is that misuse of blank signed cheque by the complainant. After considering the evidence adduced and produced by the complainant and accused on record, learned trial judge acquitted the accused for offence punishable

under section 138 of the Negotiable Instruments Act, by judgment and order dated 8.2.2010.

4. Being aggrieved and dissatisfied by the said judgment and order of acquittal, complainant/applicant herein preferred present application, seeking leave to file appeal against the same.

5. I have perused impugned judgment and order dated 8.2.2010, acquitting the accused with the assistance of learned counsel for the parties. As regards the contention of the complainant that he gave friendly hand loan to the accused to the tune of Rs.50,000/-, learned trial judge, after assessing the evidence observed in the impugned judgment that complainant was running a grocery shop and turn over of the said shop was between Rs.2,000/- to Rs.3,000/- per day, amounting monthly turnover to the extent of Rs.90,000/-, deriving profit of Rs.20,000/- p.m. to him.

6. Hence, learned trial judge further observed that complainant hardly possessed the financial ability to keep a sum of Rs.50,000/- with him at once. In cross examination, he stated that he took Rs.30,000/- from his father and by adding his own contribution of Rs.20,000/-, gave the hand loan of Rs. 50,000/- to the accused. Hence, learned trial judge concluded, in view of the said discussion that it is clear that complainant is certainly not a person of sound financial position who requires certain sum to be taken from other i.e.

father and under such circumstances, it is unlikely on his part to give Rs.50,000/- in cash at once to a person whose exact financial difficulty/urgency is not disclosed by him. Apparently, said observation and conclusion drawn by the learned trial judge appears to be based upon sound footing.

7. Besides learned trial judge also observed that except cheque Exh.24, there exists no independent evidence on record in the form of books of account, receipt in writing showing payment of the said amount. Moreover, accused has probablized his defence that complainant is not a holder in due course as contemplated by Section 8 of the Negotiable Instruments Act by bringing on record certain circumstances. Hence it is observed that mere issuance of cheque is not sufficient to prove the factum of existence of legally enforceable debt or other liability as on 7.3.2008 as contemplated by the explanation appended to the proviso of Section 138 of Negotiable Instruments Act. Accordingly since complainant failed to produce any writing/receipt of the statement of the account in respect of hand loan, allegedly advanced by him to the accused, to the tune of Rs.50,000/-, observations made by the learned trial judge cannot be faulted with.

8. In the circumstances, after scrutinizing and appreciating the evidence, view adopted by the learned trial judge is a possible view, to be adopted and there appears no perversity and hence, no interference therein

is warranted in the appellate jurisdiction.

8. In the result, present application bears no substance and same deserves to be dismissed. Hence present application stands dismissed and leave to file appeal stands refused.

(SHRIHARI P. DAVARE, J.)

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