

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION (ALP) NO.115 OF 2021

Kiran A. Paraswar

... Applicant

Versus

M/s. Rajashree Enterprises thr.

Rajashree R. Shelke and anr.

... Respondents

Mr. Prasad B. Kulkarni for the Applicant.

Mr. Mahendra M. Agavekar a/w Ms. Shraddha Chvan for Respondent No.1.

Ms. Sharmila Kaushik, APP for the Respondent – State.

CORAM : M.M. SATHAYE, J.

DATE : 03 SEPTEMBER, 2026

P.C. :

1. This Application is filed by the Complainant challenging the order dated 24.09.2021, passed by the learned Additional Sessions Judge, Pune in Criminal Appeal No.493 of 2017, by which the appeal filed by Respondent No.1 / original accused is allowed acquitting Respondent no.1 from the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the said Act').

2. The Applicant filed a complaint resulting in S.C.C. No.24487 of 2010 being filed. The case of the Applicant is that the parties had good family relations. That in the month of May 2009, the Respondent No. 1 Accused had approached the Applicant, demanding a hand loan for business, which was disbursed in the sum of Rs.3,50,000/-. That for part repayment of the said amount, the cheque in question of Rs.2,00,000/- dated 10.12.2009 was issued, which was dishonoured for 'insufficient funds'.

3. The Applicant examined himself as PW1. A bank employee was examined as PW2, a postal department employee was examined as PW3. Applicant's wife Mrs. Smita is examined as PW4. Respondent No.1 accused examined herself as DW1.

4. After considering the evidence, the learned 25th Judicial Magistrate First Class, Pune by order dated 16.09.2017, convicted Respondent No.1 under Section 138 of the Negotiable Instruments Act, 1881, sentencing her to suffer simple imprisonment for six months and to pay Rs.4 Lakhs as compensation.

5. Respondent No.1 Accused filed the aforesaid Appeal in which the impugned order is passed acquitting Respondent No.1.

6. Learned Counsel for the Applicant submitted that Respondent No.1 has not made out any probable defence. He submitted that story of Respondent no.1 that the cheque book of the closed business was with her son who was the friend of the Applicant Complainant who seems to have obtained blank cheque and misused it, is unbelievable. He submitted that this defence is not at all proved by Respondent No.1. He submitted that the signature on the cheque and receipt of the demand notice is not disputed and therefore there is presumption in favour of the Applicant Complainant under Section 139 of the said Act that the cheque was issued for discharge of a legal debt, which is not rebutted. He submitted that the Appellate Court was not justified in holding that the Applicant did not have financial capacity to advance loan.

7. On the other hand, the learned Counsel for Respondent No.1

submitted that the presumption under Section 139 is sufficiently rebutted from the evidence of the Complainant himself, in as much as, the complainant has been found to be not in financial condition to advance alleged loan. He submitted that the Appellate Court has acquitted Respondent No.1 and leave cannot be granted as a matter of right, unless required case is made out.

8. Having heard the learned Counsel for the parties, and after going through the impugned order and other record, as pointed out, in my view, it is not necessary to grant leave to file appeal, for the following reasons.

9. It is settled position of law the presumption under Section 139 of the said Act is rebuttable and for that purpose, the Accused can point out from the evidence led by the Complainant himself. In the present case, the Accused has entered the witness box denying the case of the Complainant.

10. From the record, it is clear that it was specifically contended that the Applicant Complainant did not have financial capacity to advance the loan and as such, the cheque cannot be said to have been given in discharge of legal debt. The Appellate Court has considered the evidence of complainant PW1, who has admitted that the Complaint as well as his affidavit does not mention the date and time of the loan advancement or any details about demand and the occasions on which such loan was advanced. Though the complainant stated that he would produce the documentary evidence to reveal the details, the same was not done. However, the complainant's wife was

examined. The Appellate Court has considered the evidence led by the Complainant's wife, who has stated that she was present when the Accused demanded a hand loan. However, it is not the Complainant's case either in the complaint or in his testimony that his wife was present at the time of the transaction of the hand loan took place. Therefore it is rightly held as an improvement in the case. It is an afterthought.

11. The Appellate Court considered the evidence of the complainant's wife PW4, about various withdrawal made from the Bank, which was stated in the support of the case that the said withdrawals were used for advancing the hand loan. The Appellate Court found that the amount of withdrawal was not matching the amount alleged to have been given as a hand loan.

12. Based on such admissions and evidence, the Appellate Court has held that the Applicant Complainant had not proved his financial capacity to advance handloan. In this respect, the Appellate Court considered the suggestion given by the Applicant Complainant to the Respondent No.1 Accused that, *'her son had handed over the cheque to the Complainant by misusing it'*. This is rightly held as change of stand because the original case is that it was issued by the Accused herself, for part-repayment of loan.

13. Upon appreciation of evidence, the Appellate Court has come to the conclusion that the alleged offence has not been proved against the Respondent No.1 Accused.

14. In the aforesaid facts and circumstances and for the reasons

indicated above, no perversity is found in the impugned order. It is not found necessary to scrutinize the case again in appeal. No case is made out for grant of leave.

15. **Accordingly, leave-application is rejected.** Since the leave to file appeal is rejected, confirming the order of acquittal, the Respondent No.1/Accused is at liberty to withdraw the amount deposited by her in the concerned Sessions Court.

(M.M. SATHAYE, J.)