

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

CRIMINAL APPLICATION NO. 2147 OF 2014

Bhaskar Shankarrao Patil

..APPLICANT

VERSUS

Shrirang Shesherao Mane

..RESPONDENT

....

Mr. Ravibhushan P. Adgaonkar, Advocate for applicant.

Mr. T.M. Venjane, Advocate for respondent.

....

CORAM : M.T. JOSHI, J.

DATED : 24th NOVEMBER, 2015

ORAL ORDER :

Heard both sides.

2. Aggrieved by the acquittal of the respondent from the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 by the learned Judicial Magistrate First Class, Latur in S.T.C.C. No. 2167/2008 vide judgment and order dated 20th February 2014, the applicant has filed the present application for leave to file appeal.

3. According to the complainant, he has paid an amount of Rs.1,50,000/- to the present respondent in the month of July 2007, against which the cheque in dispute was issued by the respondent. The cheque was however dishonoured when presented. Therefore the notice was issued by R.P.A.D. as well as under postal certificate. No reply was however received and therefore the complaint came to be filed.

4. The case of the respondent was that in fact he has obtained only an amount of Rs.30,000/- with interest @ 7% per annum. For that purpose he has even executed a bond. The said amount was repaid to the complainant. The complainant even returned the bond but did not return the cheque and misused the blank cheque.

5. Upon hearing both the sides, it appears that the notice sent by R.P.A.D. was returned back to the complainant as not claimed. Mr.Adgaonkar, learned Counsel for the applicant submitted that even the notice sent by postal certificate must have

been served and further if at all bond was returned by the complainant, the respondent should have persuaded in normal course for return of the cheque. However despite the notice by R.P.A.D and under postal certificate, the respondent did not give reply to the same or took any action for return of the cheque. He has not even issued any direction to his banker for stopping of the payment under the cheque and, therefore, this conduct ought to have been taken into consideration by the learned Judicial Magistrate First Class.

6. Without making any comment on the merit of the case, in my view since arguable case is made out, leave to file appeal is hereby granted. Application is hereby allowed and disposed of.

7. Appeal be registered as per the due procedure. Upon registration, the appeal stands **admitted**.

8. Learned Judicial Magistrate First Class, Latur to take action as per Section 390 of the Criminal Procedure Code upon admission of the appeal.

9. Learned Judicial Magistrate First Class, Latur to release the respondent on bail upon his execution of P.R. bond amounting to Rs.10,000/- and upon surety in the like amount and to submit report in this regard to this Court.

10. Respondent to appear before the learned Judicial Magistrate First Class, Latur within a period of four weeks from today.

11. Hamdast of the present order be given to the respondent.

(M.T. JOSHI, J.)