

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

Office Memoranda of appearance, directions and orders.	Notes, of Court's orders and Registrar's	Office Coram, Court's or Judge's orders.
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CRIMINAL APPLICATION NO. 2552 OF 2015

NAGO S/O MANIK PATIL
VERSUS
PRATAP GOBAJI PATIL & ANR

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Advocate for Applicant : Mr. Suryawanshi Nitin B.
Advocate for Respondent No.1: Mr. P. R. Patil.

CORAM: T. V. NALAWADE, J.
DATED: 10th August, 2015.

PER COURT:

1. The proceeding is filed under section 378 (4) of Criminal Procedure Code for grant of leave to file appeal against and judgment and order of Criminal Appeal No.40 of 1998 which was pending in the Court of learned Additional Sessions Judge, Jalgaon. Whereas learned J.M.F.C. had convicted the Respondent, accused in a private complaint for offence punishable under section 420 of I.P.C. the Appellate Court has acquitted the Respondent. Heard learned counsel for the complainant, applicant. Some hearing was given to learned counsel

for the original accused also.

2. Before the trial Court both the complainant and accused have given evidence. The accused has not disputed that he had taken hand loan from the complainant, though he has tried to say that he had returned the loan amount. He has tried to say that he had given the post dated cheques. The cheque, in question, bears date 30th April, 1989 and it is the case of the complainant that for repayment of the loan amount this cheque was given on 2nd April, 1989. It was for the amount of Rs.15,000/-. The cheque was presented for encashment on 12th May, 1989 and it was informed to him that the account was already closed.

3. The complainant has examined the manager of his bank. Though he tried to say initially that the account was closed on 17th June, 1989, in view of the record when he was cross examined, he admitted that as per the record the account was closed on 9th December, 1998. Admittedly, in the said account (No.4) no transactions were made after 9th December, 1998. The Appellate Court has given acquittal by observing that though the bank account was closed on 9th December,

1998 i.e. prior to the date when the cheque was allegedly given, this circumstance is not sufficient to lay foundation for proving the ingredients of the offence of cheating and has observed that at the inception there needs to be such intention. 2705

In view of this circumstance, this Court holds that there is good and arguable case to the applicant.

4. In the result, application is allowed. Leave is granted.

5. Appeal is admitted.

6. Comply the provisions of Section 390 of Cr.P.Code.

[T. V. NALAWADE, J.]

Dt.10/08/2015
ans/2552