

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. 6687 OF 2014

SUHAS SHANTARAM DUSHING
VERSUS
VINAYAK BABANRAO CHAVAN AND ANOTHER

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Advocate for Applicant : Mr. Bhide Vinod Y.
Advocate for Respondent No.1: Mr. Ashok B. Nehe.

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

PER COURT:

1. The application is filed under section 378 (4) of Cr.P.C. for grant of leave against judgment and order of STC No.64 of 2011 which was pending in the Court of learned J.M.F.C., Sangamner. The learned J.M.F.C. acquitted the respondent, accused of the offence punishable under section 138 of Negotiable Instruments Act. Heard learned counsel for the Applicant. Some hearing was given to the learned counsel for the Respondent, accused.
2. Seen the record. Seen the reasoning given by the

trial Court.

3. The complainant has contended that out of friendly relationship he had given Rs.70,000/- to the accused in April, 2008 and he had collected the money by taking loan from his credit society. He contended that the amount was to be repaid within 2 - 3 months but when the amount was not returned, the complainant approached the accused and requested him to return the amount. It is the case of the complainant that for returning the money the accused gave cheque of Rs.70,000/- drawn on his bank, dated 22nd November, 2010. This cheque bounced. Then after following the procedure, complaint came to be filed.

4. Complainant has given evidence. The notice was replied by the accused and he took the defence that he had taken the loan but that was about 4 years back and the amount was returned but the cheque, which was given by way of security, was not returned to him and that is being misused. The complainant has examined witnesses to prove that he had resources and after collecting the money from society he had given the hand loan. The fact that the hand loan was given is not

disputed and the accused, has disputed only the year in which the loan was given. The trial Court has considered some difference in the ink appearing on the cheque. This Court holds that there is good and arguable case to the complainant. At present also, the learned counsel for the respondent, accused placed reliance on two reported cases like (i) **AIR 2001 SC 3897 [Hiten P. Dalal V/s Bratindranath Banerjee]** and (ii) **2008 Cri.L.J. 1172 [Krishna Janardhan Bhat V/s Dattatraya G. Hegde]**. There cannot be any dispute about the proposition made in the case of Hiten Dalal. As there is arguable case, the defence of the accused need not be considered, at this stage.

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

6. Appeal is admitted.

7. Notice, after admission. It is waived by learned counsel for the Respondent.

[T. V. NALAWADE, J.]

Dt.10/08/2015
ans/6687