

IN THE HIGH COURT OF BOMBAY AT GOA.

**CRIMINAL MISCELLANEOUS APPLICATION NO.81 OF
2015.**

Mr. Shamsunder R. Palyekar Applicant.
Versus
Jagannath Pandurang Chari and anr. Respondents.

Mr. Y. Nadkarni, Advocate for the applicant.
None present for the respondent no.1 though served.
Mr. M. Amonkar, Additional Public Prosecutor for the
respondent no. 2.

Coram:- K. L. WADANE, J.
Reserved on: 7th May, 2015.
Pronounced on:- 8th May, 2015.

ORDER:

Heard Mr. Y. Nadkarni, learned Advocate appearing for
the applicant. The respondent no.1 though served is absent.

2. Mr. M. Amonkar, learned Public Prosecutor waives notice
on behalf of the respondent no.1, who is a formal party.

3. The respondent no.1 approached the complainant/ present
applicant who requested him to pay an amount of Rs. 6,00,000/-,
which the complainant gave in various instalments and towards
the repayment of the same, the accused issued three cheques in
favour of the complainant. These cheques were submitted in
the bank. However, the same were returned as dishonoured.

So the applicant/complainant had issued notice to the respondent no.1 but no reply is given. Hence, the applicant/complainant initiated proceedings under Section 138 of the Negotiable Instruments Act, 1881("the Act" for short) as the respondent no.1 failed to pay the amount under the cheques within 15 days of the receipt of the demand notice.

4. After conclusion of the trial, the learned Judicial Magistrate First Class, convicted the respondent no.1 for the offence punishable under Section 138 of the said Act and sentenced to pay compensation of Rs.6,05,000/- to the complainant within 15 days in default to pay compensation to simple imprisonment for a period of 4 months and also to simple imprisonment for a period of 4 months.

5. The respondent no.1 preferred an appeal and the learned Additional Sessions Judge has acquitted the respondent no.1. Hence, the complainant intended to file an appeal against the order of Additional Sessions Judge dated 14.5.2014 and for permission to file an appeal, present application is filed.

6. Mr. Nadkarni, learned Advocate appearing for the complainant has argued that during the course of examination

of the accused under Section 313 of Cr.P.C. he has admitted that he issued cheques in favour of the complainant, therefore, according to Mr. Nadkarni, there is presumption under provision of Section 139 of the Act that it pertained to legally enforceable debt or liability. According to Mr. Nadkarni, this aspect has not been properly considered by the learned Additional Sessions Judge.

7. I have gone through the reasons recorded by the learned JMFC, while convicting the respondent no.1 as well as the reasons recorded by the Additional Sessions Judge while acquitting the respondent no.1 and I am of the opinion that there are debatable points and there are sound grounds for appeal, therefore opportunity has to be given to the applicant/complainant to reexamine the evidence available on record. Therefore, without going deeply into the merits of the case, I am of the opinion that permission has to be granted to present the appeal, therefore, application is allowed and the applicant is permitted to present the appeal.

K. L. WADANE,J.

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