

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION (ALP) NO.269 OF 2013

Jaideep V. Shelke	...Applicant
V/s.	
Smt.Megha D. Satpute & Anr.	...Respondents

Mr.Chetan Patil, for the applicant-appellant.
Mr.Anamika Malhotra, APP for the respondent-State.
Mr.Anand S. Patil, for respondent no.1.

CORAM : A.R. JOSHI, J.
DATE : 07TH AUGUST 2015

P.C.:

1. Heard rival submissions on this application for leave to file appeal challenging the acquittal of the respondent in the matter of offence punishable under section 138 of Negotiable Instruments Act, 1881.

2. The apparent defense of the respondent-accused is that she had not opened the said relevant bank account and had not issued any cheque to the present applicant-original complainant. It is her defense that her own daughter and present applicant have some illicit relations and they have forged and fabricated the documents concerning account opening and the

concern cheque from the said bank account was given to the complainant and dishonour of the same is the cause for the case against her. Admittedly the respondent did not enter into the witness box. Moreover though she examined the concerned bank officer and through whom account opening forms and the documents regarding the address were produced before the Court, there is nothing in the examination of said bank official that for opening the said bank account the present respondent-accused did not initiate anything and infact some third party had opened the said account, even after knowing that a fraud has been played against her by way of lodging of the complaint for dishonoured of cheque. It was definitely to the knowledge of the respondent if what she alleged is correct that the account with the concerned bank was never opened by her and she had not given any cheque to the present applicant to satisfy any legally enforceable dues, she had not approached the concerned bank for directing the said account be closed even after knowing that apparently fraud is played on her.

3. It appears that the trial Court was influenced by her defense but without any material produced before the Court to accept that she has not opened the account and false and fabricated documents were given to the bank. Even the cheque dishonored memo do not suggest that the signature on the cheque differs or that it was dishonored for some other reason than the reasons which attract the provisions of section 138 of Negotiable Instruments Act. In any event this aspect as to the present applicant whether legally entitled to receive the amount under the cheque and whether the respondent was not at all operating the said account and had not infact opened it by herself, are the aspects to be dealt in detail in the appeal. Hence the present application for leave is allowed.

4. The appeal is admitted. Call for R & P.

5. Instead of issuing process under section 390 of Cr.P.C. against the respondent, she is directed to appear before the learned trial Court to execute P.R. Bond in a sum of Rs.500/- with one surety to avail the bail.

6. Respondent to appear before trial Court on 25th August 2015.

7. Parties to act on authenticated copy of this order.

(A.R. JOSHI, J.)