

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION (ALP) NO.247 OF 2015

Dadaso S. Gadade ...Applicant/Appellant  
V/s.  
Mahadev L. Karajange & Anr. ...Respondents

----

Mr.Balwant Salunkhe, for the applicant-appellant.  
Mrs.P.P.Bhosale, APP for the respondent-State.  
Mr.Vinod Sangvikar i/by Mr.Umesh Mankapure,  
for Respondent No.1.

----

**CORAM : A.R. JOSHI, J.**  
**DATE : 11TH AUGUST 2015**

**P.C.:**

1. Heard rival submission 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.

2. It is a case of the applicant-original complainant that for financial assistance asked by the respondent-accused complainant had given him cash amount of Rs.2,30,000/-. The respondent-accused agreed to repay the amount within 3 months.

After the period was over when the amount was demanded respondent gave the cheque for the said amount. The cheque bear the date 06-08-2009. The cheque was presented to the banker of the complainant but it was dishonoured. Demand notice was issued but there was no payment hence complaint was lodged.

3. What weighed with the trial Court was the apparent defense of the respondent that the concerned cheque was given by respondent to the complainant in the year 2001 for some other transaction. In order to probablize this defense respondent ought to have entered in his defense by examining him or any other witness from the bank or any other witness to show that there was a transaction in 2001 and the said concerned cheque was available to the respondent in the year 2001 itself. However, except the written arguments nothing was brought before the trial Court by the respondent-accused.

4. The trial Court was also influenced by the arguments and certain admissions given by the complainant that the demand

notice was replied by the respondent but it was not so mentioned in the complaint by the complainant. Also the trial Court was influenced by the argument on behalf of the respondent that there was nothing brought on record by the complainant that the amount of the cheque was shown in his Income Tax Returns.

5. Considering the above submission and the reasoning given by the trial Court in the opinion of this Court there is debatable issue to be dealt in detailed as to legally enforceable liability of the respondent and that is required to be done at the final adjudication of the appeal. Hence present application for leave to file appeal is allowed.

6. The appeal is admitted.

7. Instead of issuing process under section 390 of Cr.P.C. the respondent is directed to appear before the concerned trial Court on 1<sup>st</sup> September 2015 with the direction to the trial Court to release him on bail in a sum of Rs.1,000/-.

8. Call for R & P.

**(A.R. JOSHI, J.)**