

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO.407 OF 2013

Accord Engineers : Applicant
(Org. Complainant)

Versus

Sukrut Exports & Others : Respondents

.....

Mr. R. P. Walvekar for the applicant.

None present for respondent Nos.1 & 2.

Mrs. Anamika Malhotra, Addl. Public Prosecutor for the State.

.....

CORAM : A. R. JOSHI, J.

DATE : 15th July, 2015.

P.C.:

Heard the learned counsel for the applicant for leave to file an appeal challenging the acquittal of respondent nos.1 and 2 in the matter of offence punishable under section 138 of Negotiable Instruments Act.

2. As per office report respondent nos.1 and 2 are already served. Acknowledgement is already on the Court record. None present for these respondents.

3. According to the applicant-complainant, the cheque was given to him by respondent nos.1 and 2 towards payment of his charges. The applicant used to receive unfinished goods from respondent nos.1 & 2 and after processing, he used to give finished goods back. What weighed with the trial Court was some understanding between the parties that without clearance from respondents-accused the concerned cheque should not be deposited with the bankers and in spite of this, the said cheque was deposited and became dishonoured as there were instructions from the respondents-accused not to pay. The trial Court also held that the demand notice was not properly given and as such there was no demand. Considering the reasoning given by the trial Court and considering that there were other cheques also given by the applicant to respondents and almost all of them were honoured and only two cheques were dishonoured, including the present one, in the opinion of this Court, the present application is required to be allowed and the matter is required to be gone through at the final adjudication of the appeal. As such present application for leave is allowed.

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

5. Process under section 390 of the Cr.P.C. be issued against respondent nos.1 and 2 with directions to the trial Court to release respondent no.2 on bail in sum of Rs.500/-, as respondent no.1 is a partnership firm.

(A. R. Joshi, J.)