

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION [ALP] NO.303 OF 2014
WITH
CRIMINAL APPLICATION [ALP] NO.302 OF 2014

Shri Ajay Vitthal Desai	..Applicant
<i>Versus</i>	
Shri Ravindra Madhukar Dhekane and another.	..Respondents

....

Mr. Madhav Jamdar, for the Applicant.
Mr. A.R. Patil, APP, for the Respondent-State.
R.N. Sukhija, for Respondent No.1.

....

CORAM : A. R. JOSHI, J.

DATE : 25th JUNE, 2015

P.C.

1. Heard rival submissions on these applications for leave to file appeal challenging the judgment and order of acquittal/conviction of the respondent in the matter of offence punishable under Section 138 of Negotiable Instruments Act. It appears that the trial Court was influenced by the apparent fact that the respondent had taken delivery of the goods directly from the factory at Taloja and it was defence of the respondent that there was no business transaction between the parties and the respondent had given 10 cheques in blank as he had taken

loan of Rs.3,50,000/- from the present applicant. In fact giving of a cheque is not denied, but, what is denied is the transaction underlying the said cheques. On the contrary the learned Counsel for the applicant submitted that there were total 8 transactions of purchase of electrical cables of certain company at Taloja from the present applicant who is dealer of the said company. According to the applicant, for delivery of such goods the cheques were given. Out of said eight cheques, three cheques were honoured and other cheques were dishonored. Out of those five cheques in two cases the payment was made on the strength of out of court compromise and in one matter the present respondent was convicted and in these two matters he was acquitted apparently on the ground of believing the case of the respondent that there was no transaction and the cheques were given as and by way of security.

2. Counter to the above, the learned Counsel for the respondent stated that the case of the prosecution which is now argued is oral submission and not forming part of the

complaint which was filed. Regarding other details as to compounding in two matters, the learned Counsel for the respondent expressed inability to comment for want of instructions.

3. Considering the rival submissions, in the opinion of this Court, there is definitely debatable issue involved in the matter which is required to be dealt in detail at the time of hearing of the appeals which are required to be admitted after allowing the applications for leave to file appeal. Hence, the order :

:: O R D E R ::

- [i] Both the applications for leave to file appeal are allowed. Said applications be treated as appeals and be renumbered.
- [ii] Both the leave applications are accordingly disposed of. Both the appeals are also admitted. R & P be called. Process under Section 390 of Cr.P.C. be initiated against the respondent in both the matters with directions to the trial Court to release him on bail in the sum of Rs.500/- each.

(A. R. JOSHI, J.)