

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION [ALP] NO.2 OF 2014

Jagannath Bhagvan Londhe	..Applicant
<i>Versus</i>	
Ashok Maruti Shirsath and anr.	..Respondents

....
Mr. Manoj Badgajar, for the Applicant.
Mr. Bhushan U. Tayade, for Respondent No.1.
Mr. A.R. Patil, APP, for the State.
....

CORAM : A. R. JOSHI, J.

DATE : 12th 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.

2. What weighed with the trial Court was the apparent inability of the applicant / original complainant to raise the funds of Rs.4,50,000/- for giving them to the respondent as hand-loan and secondly that said amount of Rs.4,50,000/- was not mentioned in the Income Tax Returns. Further the Court

held that if the amount is not so mentioned in the I.T. Returns then it is ill-gotten amount and it cannot be recovered by legal means if given to another person as a loan.

3. In the considered view of this Court, this finding of the trial Court needs consideration inasmuch as not mentioning any amount in the Income Tax Returns is a different issue and for which a penalty can be imposed by the Income Tax Department with a possible prosecution. Secondly the trial Court over-looked the aspect that giving of cheque with signature of the respondent is not disputed but it was the defence of the respondent that he had obtained only Rs.10,000/- and for that purpose he had given a cheque in blank with his signature and that he was compelled to give such cheque and also one acknowledgment on a stamp paper.

4. Considering the rival submissions and considering the reasoning given by the trial Court in acquitting the accused, in the opinion of this Court, there is a debatable issue to be dealt in detail at the time of final adjudication of the appeal and hence the present application is allowed. Leave to file appeal is granted. Present application for leave to file appeal be converted

into appeal memo. Necessary amendment is allowed. The appeal is admitted. Instead of issuing process under Section 390 of Cr.P.C., the respondent/accused is directed to appear before the trial Court on 7th September, 2015 with directions to the trial Court to release him on bail in the sum of Rs.1000/-. Call for R & P.

(A. R. JOSHI, J.)

Deshmane (PS)