

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION [ALP] NO.44 OF 2014

M/s. Shree Ambica Classic Constructions
Pvt. Ltd.

..Applicant

Versus

Hema Deepak Rangani
and another.

..Respondents

....

Mr. Rajkumar Mishra i/b Interjuris, for the Applicant.
Mrs. Anamika Malhotra, APP, for the Respondent-State.
Mr. H.V. Kenjalkar, for Respondent No.1.

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CORAM : A. R. JOSHI, J.

DATE : 30th JUNE, 2015

P.C.

1. Heard rival arguments on this application for leave to file appeal challenging the judgment and order of acquittal of the respondent in the matter of offence punishable under Section 138 of Negotiable Instruments Act.

2. The case of the applicant/original complainant is that he was desirous of purchasing some immovable property i.e. shop from the respondent-accused for total consideration of Rs.40 Lakhs. He paid the amount and subsequently realized that there was some mortgage on the said shop and as such the

property was not clear. He represented the respondent accused to return back the amount or to clear the charge. As such, two cheques were given by the respondent. The cheques were dishonored and hence after issuing demand notice the complaint was lodged.

3. The trial Court was influenced by the situation that there was no resolution passed by the complainant company for filing of the complaint and/or the minutes books are not tendered. Apparently defence of the respondent was that the concerned cheques were given by way of security. Once this defence is taken then apparently it is admission of underlying transaction between the parties so far as giving of the cheques and entering into MOU. In spite of this, it is argued on behalf of the respondent that the MOU was not properly proved as per the Evidence Act and also there were no income tax returns thus showing the expenditure of Rs.40 Lakhs.

4. Firstly considering that there is no dispute on giving of the cheques and secondly though allegedly the cheques were given as and by way of security, the factual position is that the respondent/accused did not enter into defence by examining

herself and subjecting her with cross-examination. In any event, in the opinion of this Court there is a debatable issue in the present matter which is required to be dealt in detail at the time of final hearing of the appeal. Hence, present application for leave to file appeal is allowed. Present application be numbered as appeal. Appeal is also admitted. Call for R & P. Process under section 390 of Cr.P.C. be initiated against the respondent with directions to the trial Court to release the respondent on bail in the sum of Rs.500/-.

(A. R. JOSHI, J.)

Deshmane (PS)