

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.93 OF 2015**

**REHAMTULLA M. MULLA** )...APPLICANT

**V/s.**

**MRS.NUSRAT JABEEN REHAMUTULLA** )  
**M. MULLA AND ANR.** )...RESPONDENTS

**AND**

**CRIMINAL APPLICATION NO.97 OF 2015**

**M/S.DESTINATION IMPEX** )  
**Proprietary firm, through its proprietor** )  
**REHAMTULLA M. MULLA** )...APPLICANT

**V/s.**

**MRS.NUSRAT JABEEN REHAMUTULLA** )  
**M. MULLA AND ANR.** )...RESPONDENTS

Mr.Sharif Shaikh and Mr.Chirag Shah i/b. Mateen A.R.Shaikh,  
Advocate for the Applicants.

Mr.Deepak Thakre, APP for the Respondent - State.

**CORAM : ABHAY M. THIPSAY, J.**

**DATE : 27<sup>th</sup> MARCH 2015.**

**P.C. :**

1           Both these applications can be conveniently disposed of by this common order as the parties are the same and the points needing consideration are also the same.

2           The applicant is the husband of respondent no.1. He had prosecuted respondent no.1 on the allegation that she had committed an offence punishable under Section 138 of the Negotiable Instruments Act, by filing two different complaints in respect of two different cheques. The learned Metropolitan Magistrate, 20<sup>th</sup> Court, Mazgaon, after holding a trial found respondent no.1 not guilty, and acquitted her in both the cases. Being aggrieved by the said orders of acquittal, the applicant has filed the present two applications seeking special leave to file appeals from the impugned judgments and orders of acquittal.

3           I have heard Sharif Shaikh, the learned counsel for the applicant, in support of the applications. With his assistance, I have gone through the complaints in both the cases and the impugned judgments.

4           Broadly stated, the case of the applicant was that respondent no.1 had represented to him that her father needed some financial assistance, and that, therefore, the applicant had advanced a sum of Rs.5 Lac to respondent no.1 for giving it to her father. It is said that, in repayment thereof, respondent no.1 had issued two different cheques, each in the sum of Rs.2,50,000/- to the applicant. One cheque was issued directly in the name of the applicant, and the other, in the name of the applicant's proprietary concern.

5           A perusal of the impugned orders shows that the learned Magistrate did not accept the theory that the cheques in question had been issued in discharge of a legally enforceable debt or other liability. The Magistrate was of the view that, admittedly

the money had been advanced to the father of respondent no.1, and it was not liability of respondent no.1 to repay the amounts.

6           Apart from this, the question is whether money advanced by a husband to his wife, during the subsistence of the marriage, can be legally recovered by the husband from the wife. This would rather be quite a complex question, in my opinion. Though it is not necessary to discuss all the shades of such a complex question, and to view it from all angles, the proposition that such money would be recoverable by husband by taking recourse to law appears to be a highly doubtful proposition to me. Prima facie, it seems the husband would not be entitled to recover the money advanced by him to his wife, by filing a suit or other legal proceedings.

7           Among other things, the Magistrate observed that there was some doubt as to whether the cheques had indeed been issued by respondent no.1. This doubt was felt by the Magistrate because the evidence indicated that at the material time the

cheque books were in custody of the applicant. It is after considering this aspect of the matter, that the Magistrate reasoned that respondent no.1 was not liable to return the amount, allegedly given by the applicant to meet the financial difficulties of her father, and that, therefore, the cheques could not be said to have been issued in discharge of a legally enforceable debt or other liability.

8           As the view taken by the Magistrate can be termed as a “*possible view*” of the matter, and as the facts of the case are rather peculiar, where a husband wants to prosecute his wife criminally on the ground that she failed to repay the amount advanced by him to her, I do not think it fit to grant leave to appeal.

9           Leave refused.

10          The application is rejected.

(ABHAY M. THIPSAY, J.)