IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO.75 OF 2014

Smt. Krishna Ravindra Mehta : Applicant

Versus

Ketan V. Vakharia & Another : Respondents

WITH
CRIMINAL APPLICATION NO.76 OF 2014

Shri Ravindra Jayantilal Mehta : Applicant

Versus

Ketan V. Vakharia & Another : Respondents

WITH
CRIMINAL APPLICATION NO.77 OF 2014

Smt. Krishna Ravindra Mehta : Applicant

Versus

Ketan V. Vakharia & Another : Respondents

WITH
CRIMINAL APPLICATION NO.78 OF 2014

Smt. Ravindra Jayantilal Mehta : Applicant

Versus

Ketan V. Vakharia & Another : Respondents

WITH

CRIMINAL APPLICATION NO.79 OF 2014

Shri Ravindra Jayantilal Mehta : Applicant

Versus

Ketan V. Vakharia & Another : Respondents

WITH
CRIMINAL APPLICATION NO.80 OF 2014

Shri Ravindra Jayantilal Mehta : Applicant

Versus

Ketan V. Vakharia & Another : Respondents

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Mr. R. K. Thakur for the applicants.

Mr. Dharmendra Rohra for respondent no.1.

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

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CORAM : A. R. JOSHI, J.

DATE : 15th July, 2015.

P.C.:

Heard rival submissions on all these applications for leave to file appeals challenging the acquittal of respondent in all the matters for the offence punishable under section 138 of the Negotiable Instruments Act.

2. The case of the complainants (present applicants) is that for the total six cases which were filed for dishonour of cheques, total loan amount of Rs.27 lacs was given to the respondent. The respondent is same in all the matters, but the complainants are different inasmuch as four complaints which are filed by a person, one by his wife and one by his daughter.

3. Admittedly the entire loan amount of Rs. 27 lacs was given to the respondent in cash, though giving of such loan is not admitted by the respondent.

4. What weighed with the trial Court was the lack of material produced by the complainants insofar as the mentioning of the amount of Rs.27 lacs in the Income tax returns. On this aspect, the learned counsel for the respondents (accused) stated that there was a sort of perjury practiced by the applicants inasmuch as the applicants have produced some files and fictitious balance-sheets and subsequently they were established to be false by calling the Income tax Officer. By pointing out this, it is submitted by the learned counsel for the respondent that there

was no legally enforceable debt and, as such, the provisions of section 138 of the Negotiable Instruments Act with other relevant provisions can not attract.

5. Counter to the above, the learned counsel for the applicants submitted that whether or not the amount which was advanced as loan was accounted or unaccounted, the gist of the offence lies in the nature of transaction and whether it can be ascertained that there was no legally enforceable liability. On this aspect, it is submitted on behalf of the applicants that even the amount not shown in the Income tax return can also be recovered from the concerned accused, if the transaction between them is established as to recovery of the amount mentioned in the cheque.

6. Considering the rival submissions and considering the different defences raised during the trial on behalf of the respondent, in the opinion of this Court, in all the six matters, there is a debatable issue which is required to be dealt with in detail and, as such, all the matters are required to be admitted and at the time of hearing of the appeals, appropriate directions can be given.

7. In the result, the applications for leave to file appeals are allowed. Appeals are admitted. Process under section 390 of the Cr.P.C. be issued against the respondent. Directions are given to the learned trial Court to release the respondent on bail in the sum of Rs.500/- in each matter. Call for R & P. All the six applications are accordingly disposed of.

(A. R. Joshi, J.)