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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION (ALP) No. 135 of 2014.

Mr Sandip R. Waykar ..Applicant.
Vs
Mr Shashikant S. Darandale and Anr ..Respondents.

Mr Kishor N. Bhatia, Advocate for the Applicant.
Mrs P.P. Bhosale, APP for the State.
Ms Mansi S. Bane, Advocate for Respondent No.1.

CORAM : A.R.JOSHI, J
DATE : 24th July, 2015.

P.C. :

- 1) Heard rival submissions on this application for leave to file appeal challenging the acquittal of the respondent No.1 in the matter of offence punishable under section 138 of the Negotiable Instruments Act.
- 2) The case of the applicant/original complainant is that he had given a loan without interest to the respondent-No.1 accused. The loan was for Rs.3 lakhs. In lieu of repayment of the said loan amount, a cheque bearing No. 485702 for Rs.3 lakhs dated 19th December,2012 was given to the complainant. It was dishonoured and as such the complaint was lodged against the respondent No.1 which ended in acquittal.
- 3) Apparently, the trial Court was influenced by the defence

raised by the respondent-accused that there was no loan transaction between the parties and in fact the subject cheque was given by the complainant to one Sudam Thorat, apparently, the maternal uncle of the present applicant. Admittedly, said Sudam Thorat is not examined in the matter on behalf of the respondent no.1. Once giving of a cheque is admitted by respondent no.1, then, the presumption arise in favour of the complainant as to underlined transaction. It was incumbent on the part of the respondent no.1 to examine said Sudam Thorat or at-least to show any correspondence with said Sudam Thorat asking for return of the cheque given to him. However, that has not been done in the present matter, except the respondent-accused entered into the defence and putting forth his case.

4) Considering the above, in the opinion of this Court, there is a debatable issue which is required to be dealt with in detail at the time of final adjudication of the appeal and hence the present application for leave is allowed. The appeal is admitted. Process under section 390 of Cr.P.C. be issued against respondent no.1 with directions to the trial Court to release the respondent no.1 on bail in the sum of Rs.500/-. Call for R and P. Appeal to be placed in due course of time.

5) Application for Leave to appeal is disposed of accordingly.

(A.R.JOSHI, J.)