

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION [ALP] NO.140 OF 2014

Mohammad Shafi Usman

..Applicant

Versus

State of Maharashtra
and another.

..Respondents

....

Mrs. Racheeta R. Dhuru i/b. Legal Bond, for the Applicant.

Mr. A.R. Patil, APP, for the State.

Mr. Kishor Bhatia, for Respondent No.2.

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CORAM : A. R. JOSHI, J.

DATE : 30th JUNE, 2015

P.C.

1. Heard rival submissions 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. What influenced the trial Court was apparent answers given in the cross-examination by the applicant / original complainant that he received certain amounts prior to lodging of the complaint and this was taken as satisfaction of the dues and no amount remained outstanding to be paid by the respondent / accused and this was so held by the trial Court. It was the defence of the respondent/accused that the cheques were initially given in blank without dates and they were as and by way of security to repay the entire outstanding amount then agreed between the parties to the extent of Rs.40 Lakhs based

on certain agreement. However, it is a factual position that the respondent / accused did not enter into the defence. Also there is nothing brought on record before the trial Court that he made any attempt to get back his earlier given cheques from the complainant.

3. As such considering the rival submissions, in the opinion of this Court there is a debatable issue to be dealt in detail when the entire appeal will be heard and disposed of. Also the point as to legally enforceable liability can also be dealt with as it is argued on behalf of the respondent / accused that the cheques given as a security were given by the private limited company but the demand notice sent by the complainant was on the individual and the company is not joined as a party.

4. Application for leave is allowed. Appeal is also admitted. Call for R & P. Process under Section 390 of Cr.P.C. be issued against respondent No.2 with directions to the trial Court to release the respondent No.2 on bail in the sum of Rs.500/-.

(A. R. JOSHI, J.)