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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No. 244 of 2015

Saifuddin Hatimbhai Lokhandwala ..Applicant.
Vs
Suresh Poovvppa Chowta and Anr ..Respondents.

Mr Chetan Akerkar, Advocate for the Applicant.
Mr J.S.Hegade with Kishor Shetty for Respondent no.1.
Mr A.R. Patil, APP for the State-Respondent No.2.

CORAM : A.R.JOSHI,J

DATE : 21st July, 2015

PC. :

- 1) Learned Counsel for the applicant stated that respondent No.1, acquitted accused is already served with the notice and affidavit of service is already filed along with acknowledgment bearing signature of respondent No.1.
- 2) Heard learned Counsel for the applicant. Also heard learned Counsel for respondent No.1.
- 3) According to the applicant/complainant, he had given loan to the respondent No.1 for an amount of Rs. 4 lakhs by giving different cheques. The statement of account of the complainant was produced before the Court showing the

outgoings in favour of the respondent No.1. Apparently, giving of the two cheques of Rs. 2 lakhs each by Respondent no.1 to the complainant is not disputed. But what weighed with the trial Court was non-production of the agreement entered into between the parties for the purpose of repairing work of the society but in fact that was not the case of the applicant-complainant that the amount was given to the respondent for and by way of repairing work.

4) During the arguments, learned Counsel for respondent No.1 stated that there was no loan transaction between respondent No.1 and the complainant and whatever amounts respondent No.1 had received were towards the repairing work done by him for the society of which the applicant/complainant was the Chairman. It is further brought to the notice of this Court that in the cross-examination the complainant has admitted that the name of the payee is written by the complainant himself though the cheques were signed by respondent No.1, which were dishonoured. By pointing out this, it is submitted that the defence of the respondent No.1 as to giving of the cheques to the society by way of security is corroborated. On this aspect, the factual position is required to be construed that respondent No.1 did not enter into his defence. So also he did not examine anybody on his behalf or any office bearer of the society with whom he had dealings. Moreover, there is no action taken by respondent No.1 at any

time even prior to or after the lodging of the complaint against him, asking for the society to return back the cheques given by him allegedly by way of security.

5) In any event, in the opinion of this Court, there is a debatable issue to be dealt with in detail as to the liability of the respondent No.1 to pay the amount of dishonoured cheques and it is required to be dealt with in detail at the time of final adjudication of the appeal. Hence, the present application for leave to file appeal is allowed. Said application be treated as an appeal which shall be renumbered. Necessary amendment is allowed.

6) Instead of issuing process u/s 390 of Cr.P.C. the learned Counsel for respondent No.1 undertakes that respondent No.1 will appear before the concerned Trial Court on 24th August,2015 for executing fresh bail bonds in the sum of Rs.500/-.

7) Call for R and P

8) Accordingly application for leave to appeal is disposed of.

(A.R.JOSHI, J.)