

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION (ALP) NO.231 OF 2014

Sampatraj Himmatlalji Jain	..Applicant
V/s.	
Jayantilal Himmatlalji Jain & Anr.	..Respondents

Mr.Vatsal Verma & Mr.D.S. Mishra I/by DS Law Bureau,
for the applicant-appellant.
Mrs.P.P. Bhosale, APP for respondent-State.
Mr.Dineshkumar Jain, for respondent no.1.

CORAM : A.R. JOSHI, J.
DATE : 21ST 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 Negotiable Instruments Act.

2. The case of the applicant-original complaint is that he and his brother i.e. respondent no.1 are dealing in soiled and mutilated notes of Indian Currency and the applicant used to collect such notes from various parts of the country and used to sent them to respondent-his brother. Respondent used to get

them exchange for new notes and used to give the amount by cheque, back to the complainant. The concerned cheque in the present matter is of Rs.13 lakh. Initially there was defense of the respondent-accused that the cheque was not given to the applicant so also it was not signed. However, during cross-examination as per the suggestion given to the complainant, the signature on the cheque was apparently accepted. Moreover, respondent-accused did not examine any hand writing expert to deny his signature. The trial Court was influenced by the circumstance that the amount of cheque was not reflected in the Income Tax Return of the complainant. Moreover, the trial Court came to conclusion that complainant fail to establish legally enforceable liability of his brother-respondent.

3. In the considered opinion of this Court there is debatable issue which is required to be dealt in detailed as per legally enforceable liability and giving of cheque to that effect and these issues are also required to be dealt in detailed at the final adjudication of the appeal. In the result present application for

leave to file appeal is allowed. The application be treated as an appeal and be numbered accordingly.

4. Process under section 390 of Cr.P.C. is not issued at this stage as learned counsel for the respondent-accused stated that the respondent will appear before the trial Court on a particular date and execute a bail bonds in sum of Rs.500/- and the trial Court shall accept the said bail. Respondent to appear before the trial Court on 14th August 2015 for compliance of the bail order.

5. Call for R & P.

6. Application for leave to file appeal is accordingly disposed of.

(A.R. JOSHI, J.)