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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No. 260 of 2015.

Prakash Chandru Butani

..Applicant.

Vs

Jaiprakash G. Hasija and Anr

..Respondents.

Mr Khan Salman i/by S.M. Railkar,
Advocate for the Applicant.

Mr V.B.Shivarkar for Respondent No.1.

Mrs P.P. Bhosale APP for the State.

CORAM : A.R.JOSHI,J

DATE : 22nd July, 2015

PC. :

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 complainant is that he gave hand loan of Rs.3,60,000/- to the respondent No.1-accused for some period. Thereafter, he requested to return money but the accused asked for time and subsequently gave a cheque for the said amount. The said cheque was presented by the complainant to his bankers but it was dishonoured. After issuing demand notice the complaint was lodged.

3) Defence of the accused respondent No.1 is that there was no any loan transaction between the parties and even he did not know the complainant. According to the respondent No.1/Accused, some series of cheques bearing Nos. 905532 to 905540 were given to one Bhanwar Sanghavi in 2002. According to the respondent accused, the complainant/applicant in connivance with said Bhanwar Sanghavi had filed a false and fictitious claim. It is also defence of the accused that in the year 2002 when he gave cheques to said Bhanwar Sanghavi, the cases were lodged against him by said Bhanwar Sanghavi and some others using the cheques from the said series.

4) What weighed with the trial Court was the defence of the accused that on 13th January, 2005 he issued a notice to his banker for stop payment of all those series of cheques. The concerned cheque which was dishonoured in the present case is of the date of 26th January, 2006. The defence of the accused was that no prudent man would sign the cheque and put date of a public holiday and in fact this defence was rather appreciated by the trial Court. Though it was the defence as to intimation given to the banker on 13th January, 2005 by the accused asking for stop payment, apparently, it is a factual position that in the year 2006 the father of said Bhanwar Sanghavi had filed a similar complaint under section 138 of the N.I. Act against the accused and the certified copy of the said complaint was produced before the trial Court.

5) Apparently, at the time of dismissal of the complaint in the

present matter, the complaint lodged by the father of Bhanwar Sanghavi was already ended in conviction of the present respondent-accused. As such, at one hand, there was defence of the accused that on 13th January, 2005 he informed his banker for not to encash the cheques allegedly given to Bhanwar Sanghavi but for dishonour of two cheques from the series there was a conviction against the present respondent/accused and considering that said Bhanwar Sanghavi is not examined by the respondent-accused, in the opinion of this Court there is a debatable issue which is required to be dealt with, in detail, as to legally enforceable liability of the respondent-accused and that can be done at the time of final adjudication of the appeal. Hence, the present application for leave to appeal is allowed.

6) The appeal is admitted. Process under section 390 of Cr.PC. be issued against respondent No.1/accused 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.

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

(A.R.JOSHI, J.)