

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.261 OF 2015

M/s. Adarsh Steel

...Applicant

Versus

M/s. Mahaveer Sales & Anr.

...Respondents

....

Mr. Prashant H. Chande for the Applicant.

Mr. V.D. Raut for Respondent No.1.

Ms R.V. Newton, APP for Respondent No.2- State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : 7th SEPTEMBER, 2015.

P. C. :

This is an application for leave to appeal against the judgment dated 9th October, 2013, whereby the learned Additional Sessions Judge, Pune, has allowed the Appeal No.30 of 2007 and thereby acquitted the respondent for the offence punishable under section 138 of the Negotiable Instruments Act.

2. The learned Magistrate had held the respondent accused guilty of offence under Section 138 of the N.I. Act. The said judgment has been set aside by the learned Sessions Judge mainly on the ground that PW-2 Jabarmal has admitted that an amount of Rs.60,000/- was refunded

to him and accordingly the agreement dated 15.10.2003 was cancelled. In this regard, the testimony of PW-2, reveals that he had paid Rs.50,000/- to the accused through the complainant. PW-2 has deposed that the complainant had paid to him Rs.60,000/-. *Prima facie* the said statement does not lead to an inference that the accused had issued a cheque in favour of PW-2. The issues raised by the applicant need to be adjudicated on merits. Arguable points are raised.

3. Hence, the application for leave to appeal is granted. The appeal stands admitted. It is submitted by learned counsel for Respondent No.1 that accused was on bail.

4. The accused to furnish bond of Rs.10,000/- with one surety in the like amount to the satisfaction of the Sessions Court, Pune.

(ANUJA PRABHUDESSAI, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed
Judgment /order.