

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

CRIMINAL APPLICATION (ALP) NO.269 OF 2015

Uday Mahadev Chorge ..Applicant
V/s.
Ashif Allauddin Lakhwa & Anr. .. Respondents

Mr.S.K.Fharkate for the applicant.
Mrs.Anamika Malhotra APP for the Respondent-State.

**CORAM : A. R. JOSHI, J.
DATE : 01st DECEMBER, 2015.**

P.C.

1. Heard rival arguments 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 Instrument Act.

2. The case of the applicant/original complainant is that there was some transaction of purchase of one room belonging to respondent no.1-accused for the total consideration of Rs.11,00,000/-. The said amount was paid by cash and also by cheques. For this purpose the officer from the concerned bank was examined before the trial Court for showing that the three cheques of Rs.3,00,000/- each were

deposited in the bank account. The defence of the accused/respondent no.1 is that he had taken only a loan of Rs.80,000/- from the complainant and there was no transaction of sale of any room, much less for such a small amount of Rs.11,00,000/-. It is also the defence of respondent no.1 that he was taken to some Notary by the complainant and was asked to sign on two to three documents. Apparently the trial Court was influenced by the defence but did not consider the factual position that giving of a cheque was not disputed by the respondent no.1 as according to the defence the complainant obtained said cheque as a security for the borrowed amount of Rs.80,000/- and it was misused.

3. Considering the reasoning given by the trial Court there appears a substantive question to be dealt in detail in the appeal and as such present application for leave to file appeal is allowed and disposed of accordingly. Appeal is also admitted. Call for R & P.

(A. R. JOSHI, J)