

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

CRIMINAL APPLICATION (ALP) NO. 281 OF 2015

M/s. Keya Traders	...Applicant/Appellant
V/s.	
Tanaji D. Jagtap and Ors.	...Respondent

Mr.Nilesh Das, for the applicant-appellant.
Mrs.P.P. Bhosale, APP for the respondent-State.
Mr.R.P. Pandey, for respondent no.1.

CORAM : A.R. JOSHI, J.
DATE : 07TH AUGUST 2015

P.C.:

1. Heard rival submissions on this application for leave to file appeal challenging the acquittal of the respondent in the matter of offence punishable under section 138 of Negotiable Instruments Act, 1881.

2. The case of the applicant-complainant was that he had given a loan of Rs.4 lakhs for purchase of some vehicle to the respondent-accused. That the amount was given by way of cheque apparently receipt of this amount is accepted by the respondent. But the defense of the respondent is that he received this amount as an by way of advance from the complainant as under the business transactions the respondent was supplying the

goods to the complainant and the said amount was to be adjusted in the bills which were to be raised by the respondent against the complainant. It is also the defense of the respondent that the 4 cheques were given in the year 2007 itself to the complainant when infact respondent received the said advance amount of Rs.4 lakhs and the complainant has used those 4 cheques apparently given in the year 2007, by writing on those cheques the date of 2011.

3. Apparently there was nothing brought before the trial Court to substantiate the defense of the respondent that the cheques which were subsequently dishonored, were given by him in the year 2007. At the most on that count any officer from the bank could have been examined to say that those series of cheques were given to the account holder in a particular year and on a particular day as always there is record maintained by the bank. However, this material was not brought before the trial Court but trial Court was influenced by the position that in order to repay the loan why party will give 4 cheques and why the complainant

has accepted four cheques. This was considered that doubtful by the trial Court but apparently there could not have been anything in this transaction to doubt, for the reason that for repayment a party may give number of cheques. In any event considering that no such defense is earlier raised by answering the demand notice, and still considering that the giving of the four cheques is not disputed by the respondent, in the opinion of this Court it is a case in which a debatable issue is required to be dealt in detail in the appeal. Hence order.

:: ORDER ::

- (i) The application for leave to file appeal is allowed.
- (ii) The said application be treated as an appeal memo. Necessary amendment be done. Instead of issuing process under section 390 of Cr.P.C against the respondent, he is directed to appear before the trial Court on 2nd September 2015 and trial Court shall release him on bail in a sum of Rs.1,000/- with one surety in like amount.
- (iii) Call for R & P.

(A.R. JOSHI, J.)