

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION [ALP] NO.386 OF 2013

Trimurti Grapes Export	..Applicant
<i>Versus</i>	
Shri Manoj Prabhakar Borade and Anr.	..Respondents

....
Mr. A.R. Deshpande, for the Applicant.
Mr. Tushar Sonawane, for Respondent No.1.
Mrs. P.P. Bhosale, APP, for the Respondent - State.
....

CORAM : A. R. JOSHI, J.

DATE : 10th JUNE, 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.

2. After going through the reasoning given by the trial Court, it appears that there is a point for consideration to be decided in appeal which is allowed to be filed by the applicant as apparently the trial Court has lost sight of the transaction between the applicant and the respondent-accused in view of the agreement (Exhibit-17). By said agreement (Exhibit-17),

apparently the respondent/accused had undertaken to pay the amount which was required to be paid by the overseas company to the complainant for export of grapes belonging to the complainant. Though the respondent had denied execution of such an agreement, admittedly there is no cross-examination of the complainant and denial of such agreement during such cross-examination. Only point pressed on behalf of the respondent is that such agreement is not mentioned in the complaint and also in the demand notice.

3. Considering the above, in the opinion of this Court, definitely there is a point to be decided leading to the establishment of the legally enforceable liability or not of the respondent and hence the present application for leave is allowed. Application be treated as an appeal under Section 378(4) of Cr.P.C.. Appeal is also admitted. Process under Section 390 of Cr.P.C. be issued against the respondents with directions to the trial Court to release the respondent on formal bail in the sum of Rs.500/-.

(A. R. JOSHI, J.)