

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION [ALP] NO.417 OF 2013

Sayyad Ayyub Imam	..Applicant
<i>Versus</i>	
Milan G. Goradia	
and another.	..Respondents

....
Mr. S.A. Sawant, Advocate for the Applicant.
Mrs. P.P. Bhosale, APP, for the Respondent-State.
....

CORAM : A. R. JOSHI, J.

DATE : 1st JULY, 2015

P.C.

1. Heard learned Counsel for the applicant / original complainant 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 Instruments Act.

2. Reportedly respondent No.1 is served but none appeared for respondent No.1. On 24.6.2015 also none appeared for respondent No.1.

3. The case of the applicant/original complainant is that

he gave friendly loan of Rs.22,50,000/- by way of four cheques and towards repayment he was given cheque for the total amount and the said cheque was dishonored and consequently the complaint was lodged after issuance of the demand notice.

4. What weighed with the trial Court was apparent financial disability of the complainant to raise those funds of Rs.22,50,000/-, but, apparently the trial Court has lost sight of the fact that the respondent in the reply notice had admitted receipt of amount by cheques from the complainant. Furthermore it is the substantive evidence of PW-2, the Branch Officer, that the cheque which was dishonored was drawn from the bank account and the signature of the respondent on the said cheque was tallying with the account opening card. These two major aspects were supporting the case of the complainant but were not appreciated in proper perspective by the trial Court. Also what weighed with the trial Court was the non-filing of the income tax returns in order to establish that the cheques of Rs.22,50,000/- were given to the respondent/accused.

5. Though there is no scope for hearing of learned Counsel for respondent No.1 for his absence, after going through

the material on record by way of notes of evidence and reasoning given by the trial Court, in the opinion of this Court there is a debatable point which is required to be dealt in detail in the appeal and hence present application for leave is allowed and disposed of accordingly. Appeal be numbered. Consequently appeal is also admitted. Call for R & P. Process under Section 390 of Cr.P.C. be issued against respondent No.1 with directions to the trial Court to release the respondent No.1 on bail in the sum of Rs.500/-. Learned APP for respondent No.2-State waives service.

(A. R. JOSHI, J.)

Deshmane (PS)