

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

CRIMINAL APPLICATION (ALP) NO. 471 OF 2013

M/s. Ganesh Trading Co. ..Applicant/Appellant
V/s.
Mr. Dilip Nanku Gupta & Anr. .. Respondents

Mr. Kishor M. Bhatia, for applicant/appellant.
Mr.A.R. Patil, APP for State.
Mr. Irfan A. Shaikh, for respondent no.1.

**CORAM : A. R. JOSHI, J.
DATE : 22ND JUNE, 2015.**

P.C.

1. Heard rival submissions on this application for leave to file appeal challenging the judgment and order of acquittal of Respondent No.1, in the matter of offence punishable under section 138 of Negotiable Instrument Act.

2. The Trial Court had accepted the giving of the cheque and which was admittedly signed by the respondent. However, the Trial Court held that on probabilities it was established by the respondent, without examining any defense witness, that the cheque was given as a security but still the Trial Court held that there was presumption under section 139

of the Negotiable Instruments Act. Still, inspite of this, the Trial Court accepted the defense and dismissed the complaint and acquitted the respondent accused.

3. Considering the above, there is debatable issue involved in the matter which is required to be dealt in detail at the time of hearing of the appeal. As such the application for leave to file appeal is allowed.

4. The application for leave be treated as appeal memo and be separately numbered as appeal. The said appeal is also admitted. Process under section 390 of Cr.P.C. be issued against respondent no.1 with direction to the Trial Court to release the respondent on bail in the sum of Rs.500/-.

5. Call for R & P.

(A. R. JOSHI, J)