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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION (ALP) No. 386 of 2014.

Bashit Transport

..Applicant.

Vs

State of Maharashtra & Anr

..Respondents.

Mr Uday Warunjikar, Advocate for the Applicant.

Mr R.R. Salvi i/by Rajesh S. Jadhav for the Respondent
No.2.

Mrs P.P. Bhosale APP for the State.

CORAM : A.R.JOSHI,J

DATE : 22nd July, 2015

PC. :

1) Heard rival submissions on this application for leave to file appeal challenging the acquittal of respondent No.2 in the matter of offence punishable under section 138 of the Negotiable Instruments Act.

2) The case of the applicant/original complainant is that certain excavation and earth moving machinery and vehicles were used by the respondent No.2-accused on various occasions and in lieu of outstanding dues for such work and use of vehicles, accounts were settled and two cheques of Rs.5 lakhs each were given to the complainant and the respondent accused no.2 agreed to pay the balance amount, out of total Rs. 16 lakhs

and odd outstanding as per the statement of account.

3) Defence of the respondent No.2 accused is that he had never such transaction of any hiring of any vehicle or equipments and has nothing to do with the arrival of settlement and there was no liability to pay any amount to the complainant. Alternate defence of the respondent No.2 is that there was some business relation between him and the son of the complainant and said son required to take loan and for that purpose he wanted to show his financial position and for that purpose the complainant had given these cheques as and by way of security by putting signatures but the cheques were blank.

4) What weighted with the trial Court was non filing of any document showing hiring of the vehicles, use of the vehicles at any site, any receipt or challan given to the respondent No.2 accused. So far as alternate defence is concerned, apparently, there is no finding by the trial Court, when, admittedly, the respondent No.2 did not enter into his defence by examining himself or any witness on his part. Thus, the fact remains that according to the own defence of the respondent No.2 the cheques were given by signing them. As such, in the opinion of this Court, prima facie there was presumption in favour of the complainant and which was required to have been rebutted by the respondent-accused. Apparently, there was nothing on record by way of any evidence given by the respondent No.2 or any

communication with the son of the complainant on the aspect as to giving of the two cheques for security.

5) Considering the above, in the opinion of this Court, there is a debatable issue which is required to be dealt in detail at the time of final adjudication of the appeal and hence the present application for leave is allowed. The appeal is admitted.

6) Process under section 390 of Cr.P.C. be issued against respondent No.2 with directions to the trial Court to release the respondent No.2 on bail in the sum of Rs.500/-. Call for R and P. Appeal to be placed in due course of time.

7) Application for Leave to appeal is disposed of accordingly.

(A.R.JOSHI, J.)