

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION [ALP] NO.493 OF 2013

M/s. Passion Enterprises	..Applicant
<i>Versus</i>	
Vilas B. Sawant and anr.	..Respondents

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Mr. Anurag Jain, for the Applicant.
Mr. Shailendra Kamtekar, for Respondent No.1.

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CORAM : A. R. JOSHI, J.

DATE : 12th AUGUST, 2015

P.C.

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

2. What weighed with the trial Court that there was no authority filed before the Court by the complainant that he was authorized to give evidence by other partners of the partnership firm. Admittedly the respondent did not enter into defence but his defence which transpires from section 313 Cr.P.C. statement and the tenor of the cross-examination that the concerned

dishonored cheques were given by the respondent to the complainant as and by way of security in advance for advertisement purpose but the complainant had misused said cheques in spite of the accounts were settled between the parties. Admittedly, the demand notice was served on the respondent and the RPAD slip was filed before the trial Court but there was no reply to the demand notice. The trial Court also was influenced by the fact that no any bills were produced before the Court in order to substantiate the transaction between the parties but the trial Court overlooked that the respondent did not dispute giving of the cheques and the signatures on them. As such, the trial Court apparently overlooked the presumption under Section 139 of Negotiable Instruments Act.

3. In any event, in the opinion of this Court, there is a debatable issue to be dealt in detail at the time of final disposal of the appeal. Hence, present application is allowed. Leave to file appeal is granted.

4. Present application be treated as appeal memo. Necessary amendments be done. Appeal is admitted. Instead of

issuing process under Section 390 of Cr.P.C. against the respondent he is directed to appear before the trial Court on 7th September, 2015 with directions to the trial Court to release the respondent on bail in the sum of Rs.1000/-. Call for R & P.

(A. R. JOSHI, J.)

Deshmane (PS)