

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

CRIMINAL APPLICATION (ALP) NO. 610 OF 2013

Shalan Subhash Wagh ..Applicant/Appellant
V/s.

Bapurao Dadasaheb Gaikwad & Anr. .. Respondents

Mr.S.V. Kotwal, for applicant-appellant.
Mrs.P.P. Bhosale, APP for Respondent-State.
Mr.Vikas B. Tapkir, for respondent.

**CORAM : A. R. JOSHI, J.
DATE : 2ND JULY, 2015.**

P.C.

1. Heard, learned counsel for the applicant-original complainant in the first sitting, and now heard learned counsel for the respondent-accused in the second sitting.

2. This is an application for leave to file appeal challenging the order of acquittal of respondents for the offence punishable under section 138 of Negotiable Instruments Act.

3. The case of the complainant is that present respondent had taken hand loan of Rs.5 lakhs and she had given said handloan by cheque. On the day of this transaction

a sort of agreement was entered into between the parties signed by them and in the said agreement it is mentioned that the respondent-accused acknowledged the indebtedness of Rs.5 lakhs and agreed to pay amount within three months and infact on the same day he had given cheque for Rs.5 lakhs to the complainant. This cheque was subsequently dishonoured thus leading to the complaint against the respondent.

4. What weighed with the trial Court was some alteration in the dates concerning the agreement entered into between the parties as initially typed written date 03-07-2007 was subsequently change to 28-09-2007. Even there is a change in the date on which the cheque was given. But the agreement itself show the acknowledgement of indebtedness by the respondent and this fact is apparently overlooked by the trial Court while disbelieving the agreement mainly on the circumstances that on the same day of the agreement the concerned cheque was given by the respondent to the complainant. Secondly there are various defences taken by the respondent. Firstly, regarding the cheque of Rs.5 lakh which

was given by the complainant as mentioned in the agreement not from her bank account. Secondly, there were interpolations in the date in the agreement and thirdly, that the cheque was given as and by way of security towards some transaction between the respondent and the husband of the complainant. In spite of these defenses respondent did not enter into defense and did not examine himself, still the trial Court came to the conclusion that there was no legally enforceable debt though infact giving of the cheque was not disputed in view of the last defense as that of cheque was given as a security.

5. Considering the above circumstances, in the opinion of this Court, there is a debatable issue which is required to be dealt with at the final adjudication of the appeal which is required to be admitted. Hence present application for leave to file appeal is allowed. The said application be renumbered as appeal. Appeal is also admitted. Call for R & P.

(A. R. JOSHI, J)