

CRIMINAL APPLICATION NO.4287 OF 2015

VERSUS

Shri G.A. Kulkarni, Advocate holding for
Shri R.S. Deshmukh, Advocate for applicant
Shri P.S. Patil, A.P.P. for respondent No.2/ State

DATED: 15th February, 2016.

1. Heard learned counsel for the applicant and learned A.P.P. for respondent No.2/ State. Notice to respondent No.1 is yet not issued.

2. Learned counsel for the applicant submits that, when the Criminal Complaint under Section 138 of the Negotiable Instruments Act was filed, the complainant was not aware that the cheque issued by the respondent/ accused has been issued by him from the account of his father and not his own account. This fact was revealed in the course of the trial under Section

138 of the Negotiable Instruments Act. The learned counsel submits that, in view of the provisions of Section 138 of the Negotiable Instruments Act, he is not in a position to claim that offence under Section 138 of the Negotiable Instruments Act was made out, but the learned counsel submits that, para 17 of the judgment of the trial Court itself shows that the Judicial Magistrate, First Class found from the record that it was a case of cheating. It is stated that, if the Judicial Magistrate, First Class, in the course of trial found that some other offence was made out, the cognizance of that offence should have been taken and charge altered, and further action on that basis should have been taken.

3. Considered the provisions of Sections 190, 200 and 216 of the Code of Criminal Procedure. It is a matter of consideration if instead of proceeding to acquit the accused for offence with which he had been charged, it was necessary for the Judicial Magistrate, First Class to take cognizance of the offence which was appearing from the record. As such, there appears ground to interfere.

4. Leave is granted. Application be converted into Appeal.

5. Appeal is **admitted**.

6. Issue notice to respondents after admission of appeal.
7. Learned A.P.P. waives service for respondent No.2/ State after admission of appeal.
8. Paper Book be got prepared.
9. Action under Section 390 of the Code of Criminal Procedure be taken against the respondent No.1 be taken in the trial Court.

(A.I.S. CHEEMA, J.)

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