

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

CRIMINAL APPLICATION NO. 4368 OF 2015

SALASAR ASSOCIATES PRIVATE LIMITED,
THROUGH ITS POA
BABASAHEB PANDITRAO SALVE
VERSUS
ABCHAL TELECOM,
THROUGH ITS PROPRIETOR,
YUDHVINDER SINGH

...

Advocate for Applicants : Mrs. Anjali Dube (Bajpai).

Advocate for Respondent : Mr. Rajendra S. Deshmukh.

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CORAM : **INDIRA K. JAIN, J.**

DATE : 20th April, 2016.

ORDER:

. By this application under Section 378 (4) of the Code of Criminal Procedure Applicant / original Complainant seeks leave to appeal against the judgment and order dated 10th June, 2015 passed by the learned Judicial Magistrate First Class, Aurangabad in S.C.C. No.3374 of 2012.

2 Heard the learned counsel for parties. Perused impugned judgment and order.

3 Applicant is a private limited company dealing in business

of electronic goods. Respondent / Accused is one of the customers of Applicant. Goods were supplied to Respondent on credit from time to time. Cheques in question were issued by the Respondent against the dues and cheques were dishonoured. Hence complaint under Section 138 of the Negotiable Instruments Act was filed after issuing statutory notice.

4 It can be seen from the record that Accused had admitted issuance of cheques. Signature on cheques is not in dispute. Defence raised is three fold.

- (i) That cheques were issued as security,
- (ii) Legal notice was not received, and
- (iii) Complainant did not present cheques to the bankers of Accused.

5 Considering the undisputed facts regarding issuance of cheques and signatures thereon it was for the Accused to rebut presumption under Section 139 of the Negotiable Instruments Act. Reasonings recorded by Trial Court clearly indicate that negative burden was placed. Complainant thus has an arguable case. Hence the following order –

ORDER

- I. Criminal Application No.4368 of 2015 is allowed.
- II. Leave granted
- III. Appeal is **Admitted**.
- IV. Mr. Rajendra S. Deshmukh, learned counsel
waives service of notice for sole Respondent.
- V. Action under Section 390 of the Code of Criminal
Procedure stands dispensed with.
- VI. Call record and proceedings.

[INDIRA K. JAIN, J.]

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