

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.7071 OF 2014

Yohan Bapurao Makasare

.. Applicant

Versus

Sau. Ulka Murlidhar Thorat

.. Respondent

Mr.Amol K. Gawali, Advocate for the applicant

Mr.N.C.Garud, Advocate for the respondent sole

CORAM : V.L.ACHLIYA, J.

DATED : 06.10.2016

P.C. :-

1. Heard learned counsel for the applicant and respondent.

2. The applicant has filed criminal complaint under Section 138 of the Negotiable Instruments Act therein alleging that the respondent has issued a cheque of Rs.95,000/- in discharge of legal liability to repay the loan obtained from the applicant. The cheque was dishonored. In spite of statutory notice the amount was not paid and therefore the respondent has committed the offence punishable under Section 138 of the Negotiable Instruments Act.

3. Learned counsel for the applicant has vehemently

contended that once the complainant has proved its burden that the respondent has issued the cheque in question in discharge of legal liability then it raises presumption that cheque was issued in discharge of liability in whole or part. According to the learned counsel for the applicant, respondent has not discharged the onus by adducing the evidence in rebuttal.

4. On the other hand the learned counsel for the respondent submits that Trial Court has rightly dismissed the complaint on due appreciation of evidence & in the light of well settled position in law. He has submitted that respondent has examined his son to rebut the presumption. He has further submitted that the amount as claimed, cannot be termed as legally enforceable debt or liability as the amount alleged to be paid in cash and nowhere claimed that it is accounted in the income tax returns. In this context the learned counsel has placed reliance upon the decision of this Court in the case of Sanjay Mishra Vs Ms. Kanishka Kapoor @ Nikki and Anr reported in 2009 Mh.L.J. Page No.155 (Bombay).

5. In order to counter this submissions the learned counsel for the applicant has placed reliance upon the decision of this Court in the case of Krishna P. Morajkar Vs Mr. Joe Ferrao and Anr reported in 2013 ALL.

MR (Cri)4129 (Bombay).

6. Having appreciated the submissions advanced, in my view the arguable case has been made out to grant leave to file appeal. In the light of two decisions expressing contrary view it is desirable to grant leave to appeal, so as give opportunity of full fledge heavy at the stage of admission. In this view I am inclined to allow the application in terms of prayer clause (A).

7. Appeal be registered subject to removal of office objection, if any and then place the appeal for admission.

8. Learned counsel for the respondent waives service of notice for respondent.

[V.L.ACHLIYA,J.]