

**IN THE HIGH COURT OF BOMBAY AT GOA**  
**CRIMINAL MISC. APPLICATION NO. 271 OF 2015**  
**IN**  
**STAMP NUMBER MAIN NO. 2416 OF 2015**

WILSON FERNANDES. ... Applicant  
Versus  
MR.PRABHAKAR VERNEKAR AND ANR., ... Respondents

Shri C.A. Coutinho, Advocate for the Applicant.  
Shri D. Pangam, Advocate for the Respondent No.1.

Coram:- C. V. BHADANG, J.

Date:- 28th September, 2016

P.C.:

Heard learned Counsel for the parties.

2. This is an application for leave to appeal against acquittal. The learned Magistrate by the impugned judgment has acquitted the respondent by giving benefit of doubt. The case made out in the complaint was that the applicant had advanced Rs.10.00 lakhs to the respondent for return of which the respondent had passed the subject cheque which got dishonoured. The respondent set up a defence that the cheque was issued by way of a security.

3. It is submitted by the learned Counsel for the petitioner that even assuming that the cheque was issued by way of security the respondent would be liable. The learned Counsel has placed reliance

on the decision of the Supreme Court in the case of DON AYENGIA V/S. STATE OF ASSAM & ANR. (2016) 3 SCC 1.

4. The learned Counsel for the respondent no.1 has sought to distinguish the decision in the case of DON AYENGIA (supra) on the ground that in that complaint it was averred that the accused no.2 had appeared on the scene after the dishonour of the cheque and acknowledging the cheques and making endorsement to that effect on the promissory note. It is submitted that the facts would be clearly distinguishable. It is submitted that the respondent has to stand or fall on its own and he cannot take the benefit of the defence in order to contend that the respondent would be liable.

5. On hearing the learned Counsel for the parties, I find that an arguable case arises. Hence, application is allowed granting leave to appeal against acquittal. Office shall register the appeal and the same shall be treated as admitted.

6. The learned Magistrate to take action against Section 390 Cr.P.C. Hearing is expedited.

C. V. BHADANG, J.

NH