

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

**15 CRIMINAL APPLICATION NO. 1631 OF 2017
WITH
CRIMINAL APPLICATION NO. 1632 OF 2017
WITH
CRIMINAL APPLICATION NO. 1633 OF 2017**

ASHOK S/O SUWALAL BAFNA

VERSUS

BALU JATAN PATIL

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Mr. G.D.Jain, Advocate for Applicant.

Mr. A.S.Sawant, Advocate for Respondent.

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CORAM : V.L.ACHLIYA, J.

DATE : 17th JULY, 2017

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ORDER :

1. The applicant has taken out this application seeking leave to file Appeal against the impugned Judgment and order dated 23/02/2017 passed by the Judicial Magistrate First Class, Shindkheda, district Dhule.

2. In nut-shell, it is the contention of the learned

counsel for the applicant that the applicant is doing the business of building material. The accused was doing the work of contractorship. The accused has time to time purchased the goods from the complainant. On account of outstanding liability of Rs. 7,30,000/-, the accused issued three different cheques of three different banks towards discharge of liability towards the payment of goods purchased from the complainant. When these cheques were presented for its encashment, the cheques were returned unpaid with endorsement "account closed". Statutory notices issued were not complied. Therefore, the complainant filed three different complaints in respect of three different cheques. By the impugned Judgment and orders, the trial Court has dismissed the complaint and acquitted the accused by observing that the complainant failed to discharge the legal liability. It is the contention of the learned counsel for the applicant that the applicant has good case to succeed in Appeal. The complainant has examined himself and also produced the documents supporting outstanding liability. It is the contention of the learned counsel for the applicant that the trial Court has erred in appreciating the evidence.

3. On the other hand, learned counsel for

respondents supported the Judgment and order passed by the trial Court and submitted that though the complaint filed make out that cheques were issued for total amount of Rs. 7,30,000/-, the document produced in support of the case of the complainant reflects the outstanding liability of Rs. 7,40,000/-. He submits that looking to the discrepancy in respect of the cheque amount and the outstanding liability shown in the bills purchased, trial Court has dismissed the complaint and acquitted the accused. He, therefore, submits that there is no case to succeed in Appeal.

4. Having appreciated the submissions advanced, I am of the view that arguable case has been made out to be considered in Appeal. It is apparent from the record that the evidence adduced by the complainant is quite consistent with the pleadings. The complainant has supported his case by producing the bills of goods purchased. The accused has not stepped into witness box. Therefore, the question poses for consideration is, as to whether the accused has rebutted the presumption in respect of issuance of cheque. I am, therefore, inclined to allow the application and pass the following order.

ORDER

[i] Criminal Application Nos. 1631 of 2017, 1632 of 2017 and 1633 of 2017 are allowed. Leave granted to file Appeal.

[ii] The Appeals be registered and place for admission on 01/08/2017.

[iii] Learned counsel for the parties are directed to keep their respective clients present to explore the possibility of settlement.

[V.L.ACHLIYA, J.]

KNP/Cr. Apln. 1631.2017