

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

CRIMINAL APPLICATION NO.2004 OF 2016

Sheshrao Punjaji Dhanedhar

.. Applicant

Versus

Bhagwan Arjun Pachpinde

.. Respondent

Mr.P.K.Palve, Advocate h/f Mr.D.K. Dagadkhair, Advocate
for the applicant

Mr.R.K. Jadhavar, Advocate for the respondent

CORAM : V.L.ACHLIYA, J.

DATED : 24.04.2017

P.C. :-

. The applicant has moved this application seeking leave to file appeal against the impugned judgment and order dated 09.02.2016 of acquittal passed by the trial Court.

2. Heard learned counsel for the applicant and counsel representing the respondent and further perused the R & P of the trial Court.

3. In nutshell it is the contention of the learned counsel for the applicant that the judgment and order passed by the trial Court is not sustainable in law and same is passed without offering an opportunity to the applicant to lead further evidence in the matter. He

further submits that even if the evidence as adduced in the matter is considered the judgment and order of acquittal is not sustainable.

4. On the other hand learned counsel for the respondent supported the judgment and order passed by the trial Court and submits that the applicant has failed to prove that the cheque in question was issued in discharge of legal liability or dues. He submits that there is no case to grant leave to file appeal against the judgment and order.

5. Having appreciated the submissions advanced I have perused the R & P and particularly deposition of complainant as well as accused and documents produced on record I am of the opinion the case is made out to grant leave to file appeal. In nutshell the complainant has approached with the case that the accused had issued cheque of Rs.4,00,000/- towards return of earnest money. As against the total amount of Rs.10,00,000/- taken as earnest money, Rs.6,00,000/- was returned in cash and receipt to that effect obtained by the accused. The accused had issued cheque of Rs.4,00,000/- towards return of balance amount of Rs.4,00,000/-. The cheque was dishonoured when presented for encashment. On failure to comply with the statutory notice the complainant has

filed complaint under Section 138 of the Negotiable Instrument Act.

6. It appears from the record that complainant as well as accused have examined themselves in support of their respective cases. It further appears that after the statement of accused recorded and the case was posted at the stage of admission the complainant moved the application seeking permission to lead further evidence by calling the Bank Manager. The request was granted. As against the order passed by the trial Court to summon the witness the accused moved to Sessions Court and filed revision. Thereafter the case was adjourned at the instance of accused. Subsequently the case was transferred by noting the absence of the complainant the learned Judge has closed the evidence and proceeded to hear the arguments. Since the complainant and his Advocate remain absent the judgment was delivered after the hearing the argument advanced by the learned counsel for the respondent.

7. On due consideration of the submissions advanced I am of the view that arguable case has been made out to entertain the application. It appears from record that the complainant has not disputed the issuance of cheque. It is the case of the complainant that he has paid the

amount in cash. However the cheque which was obtained was not returned to the accused and same has been mis-used. There is the oath against oath. It is also to be considered as to whether the trial Court was justified in proceeding with the matter and delivering the judgment, in absence of the complainant. I am, therefore, inclined to entertain the application seeking leave to file appeal against the impugned judgment and order Court. Accordingly the application is allowed in terms of prayer Clause-B. The appeal be registered and place for admission on **02.05.2017**.

[V.L.ACHLIYA, J.]