

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

**CRIMINAL APPLICATION NO. 2492 OF 2016
WITH
CRIMINAL APPLICATION NO. 2493 OF 2016
CRIMINAL APPLICATION NO. 2494 OF 2016
CRIMINAL APPLICATION NO. 2495 OF 2016**

Nandkishor Ramprasad Mantri
Director Ekdant Moulders and
Engineers Private Limited

...APPLICANT

versus

Mahalaxmi Termo Packaging
Through its Proprietor

...RESPONDENTS

.....
Mr. Bipinchandra K. Patil, Advocate for applicant
Mr. A.P. Shejul, Advocate for respondent – State

...

CORAM : K.K. SONAWANE, J.

DATED : 8th JUNE, 2017.

Order :-

1. Heard learned counsel appearing for the parties.
2. These applications are filed under section 378(4) of the Code of Criminal Procedure (for short Cr.P.C.) for special leave to present appeal against impugned judgment and order of acquittal of respondent passed by learned Judicial Magistrate First Class (Court No. 8) Aurangabad for the offence punishable under section 138 of the Negotiable Instruments act.
3. According to learned counsel for the applicant, there are

circumstances *prima facie* in nature to establish monetary liability of the respondent/accused in this crime. But, the learned trial Court did not appreciate the circumstances on record in its proper perspective and committed error. The learned trial Court misinterpreted ratio laid down by the Hon'ble Apex Court and other High Courts in this case and arrived at incorrect conclusion. Hence, he requested for grant of leave to present appeal against the impugned judgment and order of acquittal of respondent passed by the trial Court for substantial justice in the matter.

4. The learned counsel appearing for respondent- accused vociferously opposed the contention put forth on behalf of applicant and submits that the learned trial Court has appreciated the entire oral and documentary evidence in proper manner. There is no illegality and imperfection in the order passed by the learned trial Court. Hence, he requested to reject the application for leave to present the appeal.

5. I have considered the submissions advanced on behalf of both sides. I have also perused the relevant documents produced on record including findings expressed by the learned trial Court. Admittedly, there are legal issues raised in the present application in regard to monetary liability of the accused while issuing cheque in favour of applicant/complainant. There is also dispute about *locus standi* of the complainant to file present

complaint. In such circumstances, I am of the opinion that there are legal issues arguable in nature raised in these appeals to determine the matter in issue. Therefore, I do not find any impediment to grant special leave to present the appeal against judgment and order of acquittal of the learned trial Court. Hence, application for leave to present appeal is allowed. The Registry to take requisite steps for further process.

6. In the meanwhile, call for record and proceedings

7. List the appeal for hearing before admission on 4th July, 2017.

Sd/-

[K. K. SONAWANE]
JUDGE

MTK