

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.181 OF 2016

Abbas Tyrewala	...Appellant
Versus	
The State of Maharashtra and Anr.	...Respondent

Mr. Rushi Bhuta a/w Ravi Suryanwansi Krunal Mehta for the Appellant
Mr. Niranjana Mundargi a/w Chitra Rantale i/b ALMT Legal for the Respondent No.2

CORAM: A.M.BADAR,J
DATED: 21st September, 2017

PC:-

1. This is an application for leave to Appeal filed by the complainant, whose complaint for offence punishable under Section 138 of the Negotiable Instruments Act came to be dismissed by the impugned judgment and order dated 21st March, 2016.

2. Heard the learned Advocates appearing for both the parties at sufficient length of time.

3. It is seen that the work of writing voice over script was assigned to the applicant/original complainant. Record reveals that the said work was to be completed till 27.9.2012. It was in fact completed on 30.9.2012.

4. The learned Trial Magistrate came to the conclusion that as disputed cheques bears signature of the accused initially presumption can be drawn against the accused by resorting to the provisions of Section 118 and 139 of the Negotiable Instrument Act. However, ultimately, it was held that the time was the essence of contract and as the contract was not completed within the stipulated time of the work done by the complainant was not of used in the motion picture. The accused did not enter into defence. From cross examination of the complainant as well as from the documentary evidence, the learned Trial Magistrate came to the conclusion that burden on the accused is discharged by preponderance of probabilities.

5. Reasonable doubt does not means fanciful doubt and the offence need not be proved by adducing evidence of mathematical precision. The only criteria is proof beyond reasonable doubt. In the case in hand cheques are bearing signature of the accused and *prima facie* it cannot be digested that those are unauthorisedly obtained by the complainant.

6. In this view of the matter leave as prayed is granted.

7. Admit.

8. The learned Advocate appearing for the Respondent waives service. In pursuant to action under Section 390 of Code of Criminal Procedure, the Respondent/accused to execute PR bond of Rs. 15,000/- before the Trial Court within a period of one month from today.

9. Call for Record and Proceedings.

(A.M. BADAR, J.)