

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.232 OF 2013
(For Leave to Appeal - Private)**

Shri Vijaykumar Bhupal Kavathekar ... **Applicant**
V/s.
Shri Nemgonda Pirgonda Patil & Anr. ... **Respondents**

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Ms.Amruta Devkat h/f. Mr.Vikas Kolekar, Advocate for the Applicant.

Mr.Yuvaraj Gharal i/b. Mr.Vijay Killedar, Advocate for the Respondent No.1.

Ms.Anamika Malhotra, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 18th JULY 2018.

P.C. :

1 This is an application for leave to appeal for challenging acquittal of the respondent No.1 of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

2 Heard both sides.

3 It is seen from the documentary evidence that out of outstanding debt of Rs.2,20,000/- on 26/07/2010, an amount of Rs.20,000/- came to be deposited by the respondent/accused in the Bank account of the applicant/original complainant. The cheque was for remaining of Rs.2,00,000/-. *Prima facie*, it is seen that the learned trial Court has not properly appreciated effect of presumption in favour of the applicant/original complainant and dismissed the complaint by holding that the amount was not legally recoverable from the respondent/original accused. Hence, the Order :

ORDER

- (i) Leave, as prayed, is granted.
- (ii) Application for leave to appeal be considered as Memo of Appeal on effecting necessary amendment. Leave to amend to that effect is granted.
- (iii) Admit.
- (iv) Issue notice to respondents.
- (v) Mr.Gharal, the learned Advocate waives notice for the respondent No.1/original accused. The learned Additional Public Prosecutor waives notice for the respondent No.2/State.

(vi) Call for Record and Proceedings.

(vii) In the meanwhile, in lieu of action under Section 390 of the Criminal Procedure Code, the respondent No.1 to execute P. R. Bond of Rs.15,000/- before the learned trial Court within a period of four weeks.

Raju
Dattatraya
Gaikwad

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Raju
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(A.M.BADAR J.)