

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION [ALP] NO.224 OF 2017
WITH
CRIMINAL APPLICATION [ALP] NO.225 OF 2017**

Amit Anandrao Pawar ... **Applicant**

V/s.

Sou Namrata Rounak Bhosale

@ Namrata Kundlik Naik and anr. ... **Respondents**

Mr.Kalpesh Uttamrao Patil for the applicant.

Mr.Bhooshan R. Mandlik for respondent no.1.

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

CORAM : A.M.BADAR J.

DATED : 14th JUNE 2018.

P.C. :

1. These are applications for leave to appeal challenging acquittal of contesting respondent of offence punishable under Section 138 of the Negotiable Instruments Act, 1881.
2. Heard both sides and perused the impugned judgment and order of acquittal.

3. The amount of Rs.4,00,000/- was allegedly given by the complainant to the accused as hand loan and for discharge this debt, two cheques each of Rs.2,00,000/- came to be handed over to the complainant by the accused. Two complaints, then, were filed after dishonour of those cheques by following legal formalities. After trial, the learned Trial Court acquitted the accused on the ground that there is failure on the part of the complainant to establish that cheques were for legally enforceable debt.

4. The agreement on the basis of which this finding was given, was not proved. Parties to that agreement were not examined. The complainant had only accepted the fact that he was signatory to that agreement as witness. In this view of the matter, *prima facie*, it appears that the learned Trial Court erred in concluding that burden rested on the accused was discharged on the yardstick of preponderances of the probabilities. Therefore, the order;

:: ORDER ::

- (i) Leave as prayed for is granted.
- (ii) Admit. Memo of applications be construed as memo of appeals and the learned Advocate for the applicants is directed to effect necessary amendment in the memo of applications.

(iii) Mr. Bhooshan R. Mandlik waives notice for respondent no.1.

(iv) The learned APP waives service of notice for respondent no.2/State.

(v) Call for Record and Proceedings.

(vi) In lieu of action under Section 390 of Cr.P.C., respondent no.1 to execute P.R. Bond in the sum of Rs.15,000/- before the learned Trial Court.

(A.M.BADAR J.)