

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION [ALP] NO.262 OF 2014

Avinash Balkrishan Paranjape ... **Applicant**

V/s.

Shri. Mandar Ashok Chafekar & anr. ... **Respondents**

Mr.Vaibhav Gaikwad for the applicant.

Mr.S.V. Gavand, APP for the respondent/State.

None for respondent no.1.

CORAM : A.M.BADAR J.

DATED : 19th JULY 2018.

P.C. :

1. None appears for respondent no.1.
2. Heard the learned Advocate appearing for the applicant / original complainant.
3. Towards capital for starting business, an amount of Rs.5,66,800/- was taken as a loan by the respondent / accused from the applicant. This transaction is reflected in the written agreement between the parties and towards repayment of the amount of hand loan three

cheques were given. One of those cheque came to be dishonoured. Despite this evidence, the learned Trial Court observed that there is no evidence in respect of source of income of the applicant/original complainant and amount in the cheque is not a small amount. Independent witness to prove the agreement has not been examined. *Prima facie*, it appears that the learned Trial Court has not kept in mind presumption which operates in favour of the applicant as the issuance of cheque was not in dispute. Hence, the order;

:: ORDER ::

- (i) Leave as prayed for is granted.
- (ii) Application for leave to appeal be considered as memo of appeal on effecting necessary amendment by the applicant.
- (iii) Leave to amend to that effect is granted.
- (iv) Admit
- (v) Issue notice to respondents.
- (vi) The learned Additional Public Prosecutor waives notice for respondent no.2 / State.
- (vii) In the meanwhile, action under Section 390 of Cr.P.C. before the learned Trial Court.

Vina
Arvind
Khadpe

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signed by Vina
Arvind Khadpe
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(A.M.BADAR J.)