

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

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.400 OF 2015  
(For Leave to Appeal - Private)**

Shri.Babanrav Madhavrav Gaikwad      ...      **Applicant**  
V/s.  
Shri.Ranjit Janardan Desai & Anr.      ...      **Respondents**

.....

Mr.Ratnakumar Sharma i/b. Mr.Anil L. Desai, Advocate for the Applicant.

Mr.Ramesh L. Majgaonkar, Advocate for the Respondent No.1.

Mr.A.R.Kapadnis, APP for the Respondent/State.

....

**CORAM    : A.M.BADAR J.**

**DATED    : 26<sup>th</sup> JULY 2018.**

**P.C. :**

1            Heard both sides.

2            It is seen that the applicant/original complainant and respondent No.1/original accused were partners in the partnership firm. Apart from that business dealing, the applicant/original complainant had advanced an amount of Rs.6,88,511.50 Ps. to the respondent No.1/original accused under agreement dated 28/09/2008 for advancement of business of partnership. The agreement itself contains clause that towards repayment of

amount advanced to the accused, the accused had handed over a cheque of Rs.6,88,511.50 Ps. to the complainant. The accused used that agreement for cross-examining the complainant. However, considering the repayment done during pendency of the complaint, the learned trial Court held that the presumption under Section 139 of the Negotiable Instruments Act, 1881 is not attracted. The amount advanced came to be considered as contribution in capital of the partnership.

3 In this view of the matter, case for consideration is made out. Therefore, the Order :

ORDER

- (i) Leave, as prayed, is granted.
- (ii) The application for leave to appeal be considered as Memo of Appeal on effecting necessary amendments. Leave to amend to that effect is granted.
- (iii) Issue notice to respondents.
- (iv) Mr.Majgaonkar, the learned Counsel waives notice for the respondent No.1. The learned Additional Public Prosecutor wavier notice for the respondent No.2/State.
- (v) Admit.
- (vi) Call for Record and Proceedings.

(vii) In lieu of action under Section 390 of the Criminal Procedure Code, the respondent No.1 to execute P. R. Bond of Rs.15000/- before the learned trial Court within a period of four weeks.

**(A.M.BADAR J.)**

Raju  
Dattatraya  
Gaikwad

Digitally signed by  
Raju Dattatraya  
Gaikwad

Date: 2018.07.26  
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