

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.314 OF 2017
(For Leave to Appeal - Private)**

AJS Impex Pvt. Ltd.

Through Vinaya Shankar Kanade ... **Applicant**
V/s.

Asmita Engineering Pvt. Ltd. & Ors... **Respondents**

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Mr.Ashok M.Saraogi, Advocate for the Applicant.

Ms.Namrata Kadam i/b. Mr.Amar Bhatt, Advocate for the
Respondent Nos.1 to 4.

Mrs.M.R.Tidke, APP for the Respondent No.5/State.

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CORAM : A.M.BADAR J.

DATED : 11th SEPTEMBER 2018.

P.C. :

1 This is an application for grant of leave to appeal in order to challenge acquittal of respondent Nos.3 and 4 of the offence punishable under Section 138 of the Negotiable Instruments Act, 1988 in the compliant filed by the present applicant. The application is also directed against inadequate sentence imposed on convicted accused Nos.2/the respondent No.2 herein.

2 Heard the learned Advocate appearing for the applicant/original complainant as well as the learned Advocate appearing for the respondents. Perused the material placed on record.

3 So far as acquittal of respondent Nos.3 and 4 are concerned, I see no reason to grant leave to the applicant to challenge this acquittal. Original accused Nos.3 and 4 have not played any role in the alleged transaction. Allegations against them in the complaint are to the effect that they along with accused No.2 are having control over administration, control and affairs of the Company. In the evidence of affidavit, the applicant/original complainant has reiterated the same things by stating that all accused are having control over the administration, control and affairs of the Company. However, during course of the trial, except these bald statements in the complaint and evidence affidavit, nothing more is shown against the original accused Nos.3 and 4. Merely because they are Directors of the Company, in absence of any other evidence to show their responsibility in respect of the transaction in question, they cannot be held penally liable. Hence, I see no reason for grant of leave for challenging the acquittal of respondent Nos.3 and 4. The prayer for grant of leave to that effect is rejected.

4 The applicant has established the fact that the respondent Nos.1 and 2/original accused Nos.1 and 2 have issued cheques amounting to Rs.30,98,398/- towards legally enforceable debt and those cheques were dishonoured. On conviction of the respondent Nos.1 and 2/original accused Nos.1 and 2, except imposition of fine of Rs.30,98,398/- on respondent No.1 and fine of Rs.10,000/- on respondent No.2 and default sentence of fifteen days on respondent No.2/original accused No.2, no other sentence is passed, nor any compensation is awarded. Hence, the leave deserves to be granted so far as quantum of sentence is concerned. As such, the Order :

ORDER

- 1 Leave, so far as it relates to challenging acquittal of respondent Nos.3 and 4/original accused Nos.3 and 4, is rejected.
- 2 Leave so far as it relates to quantum of sentence imposed on the respondent Nos.1 and 2, is granted.
- 3 Memo of application for leave to appeal be amended suitably. Leave to amend to that extent is granted.
- 4 Admit so far as quantum of sentence imposed on the respondent Nos.1 and 2 /original accused Nos.1 and 2 is concerned.

- 5 Issue notice to respondents.
- 6 Ms.Kadam, the learned Counsel waives notice for respondent Nos.1 and 2. The learned Additional Public Prosecutor waives notice for the respondent No.5/State.
- 7 Call for Record and Proceedings.
- 8 In lieu of action under Section 390 of the Criminal Procedure Code, the respondent No.2 to furnish P. R. Bond of Rs.15,000/- before the learned trial Court

Raju
Dattatraya
Gaikwad

(A.M.BADAR J.)

Digitally signed
by Raju
Dattatraya
Gaikwad
Date: 2018.09.11
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