

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.99 OF 2016**

Shri. Chandrakant Tatyaba Sabale .... Applicant

Vs.

Shri. Vasant Mahipati Bandalkar .... Respondents  
& Anr.

Mr. Girish R. Agrawal for the Applicant.  
Mr. Y.M. Nakhwa, APP for the State.

**Coram : Smt. Sadhana S. Jadhav, J.**  
**Date : 8<sup>th</sup> April 2019**

P.C.:

1           None appeared for the respondents on 28<sup>th</sup> November 2018. Office note shows that the notice issued to respondent no.1 is served through female family member of the respondent and the relation is not mentioned in the police report, which could not be treated as good service. Learned counsel for the applicant submits that in the companion appeal, the respondent has caused his appearance and the application for the bail is granted.

2           Perused the impugned judgment. It is admitted by the respondent at the time of trial that the cheque was issued in favour of the applicant, however, it was issued in the year 2005. However, the said defence has not been substantiated. It is observed by the learned Judge that the complainant has placed implicit reliance upon the agreement, which is at Exhibits 39 and 41. According to the learned Judge, the said agreement has not been established as per Sections 2 and 10 of the Indian Contract Act. In fact, the respondent herein has not been able to rebut the presumption to be drawn under Section 139 of Negotiable Instruments Act and in view of this, the application seeking leave to appeal deserves to be granted. Leave granted. The application is allowed.

3           Appeal admit.

4           The respondent shall cause his appearance before the JMFC, Karad on/or before 30<sup>th</sup> June 2019 and shall furnish bail bonds in the sum of Rs.15,000/- and one or more sureties in the like amount.

5           In the eventuality that the respondent does not appear, the JMFC, Karad shall issue non-bailable warrant in order to secure the presence of the respondent herein.

6           The respondent shall continue to appear before the learned Magistrate once in six months on the date assigned by the learned Magistrate. Upon failure to attend any two consecutive dates, the learned JMFC shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

( *Smt. Sadhana S. Jadhav, J*)