

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 233 OF 2018**

Mr. Shankar Shripati Gaikwad ... Applicant
V/s
Kalpana Keshav Shivgan & Anr. ... Respondents

Mr. Rushabh Thacker for the Applicant.
Ms. Nidhi Dotiay for the Respondent No. 1
Mr. S. V. Gavand, APP for the State.

**CORAM : PRAKASH D. NAIK, J.
DATED : 7th October, 2019**

P.C.:

The Applicant is seeking leave to file an appeal against the judgment and order of acquittal dated 23rd March, 2018 passed by the Trial Court in a complaint under section 138 of Negotiable Instrument Act.

2. The Trial Court while acquitting the Accused has observed that the Complainant has not established that the subject cheques were issued in discharge of the legally enforceable debts or liabilities. In paragraph no. 9 of the impugned judgment and order, the Trial Court has observed that the defence of the accused is that the Complainant was not financially sound to pay or advance huge amount to the Accused. The Accused had issued cheques in the sum of Rs.3.00 Lakhs which were dishonoured.

3. Contention of the Applicant/Complainant is that the Trial Court has proceeded on wrong assumptions and there was sufficient evidence before the Court to prove the liability. The Presumption under section 139 of the Negotiable Instrument Act is not rebutted by accused. Whereas, the Counsel for the Respondent / Accused submitted that the observations of the Trial Court are in consonance with the evidence on record. The Trial court has relied upon the evidence adduced by the Complainant and Cross-examination.

4. The learned Counsel for the Respondent relied upon the two decisions of the Apex court. In case of John K. Abraham versus Simon C. Abraham And Another, (2014) 2 SCC 236 and Basalingappa versus Mudibasappa, (2019) 5 SCC 418.

5. I have perused the evidence. Considering the issue involved in this application and the facts that the Trial Court has primarily acquitted the Accused on the basis that the Complainant was not capable of advancing loan, case for leave to file an appeal against the judgment and order of the acquittal is made out. Questions raised by the parties are required to be deal with at the time of the final hearing of the Appeal.

6. Hence, I pass the following order:

ORDER

- a. Leave to file appeal against the order of acquittal against the judgment and order of acquittal dated 23rd March, 2018 is granted.
- b. Appeal is admitted.
- c. Hearing is expedited.

(PRAKASH D. NAIK,J.)