

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 429 OF 2018**

Nitin Chandrakant Patel. ..Applicant.

V/s.

The State of Maharashtra & anr. ..Respondents.

Mr. Kapil Pannalal Dave, advocate for applicant.

Mr. Ajay Basutkar, advocate for respondent No. 2.

Mr. S.S. Pednekar, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : MARCH 25, 2019.

P. C. :

1 Heard the learned Counsel for the applicant, learned Counsel for the respondent No. 2 and the learned APP for State.

2 The complainant herein had extended a handlone of Rs. 25 Lakhs to the respondent No. 2. The amount was paid by cheque. On demand, the amount was not paid and instead, an agreement had taken place between the parties on 6/4/2010, wherein the respondent herein had admitted that he had issued two cheques to be drawn on CKP Co-operative Bank Ltd. It was further agreed that the complainant would give prior intimation before presenting the cheque for encashment. It was also agreed that the interest would be paid separately. It appears that the applicant herein had not given prior intimation but had

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presented the cheques for encashment. The cheques were dishonoured on 21/8/2008. The applicant had issued statutory notice. The said notice was not replied by the respondent. The complaint was filed. The learned Judge by an order dated 25/7/2018 was pleased to acquit the accused of all the charges. The grounds for acquittal were firstly, that no prior intimation was given; secondly, the contention raised by the accused that it was a security deposit and thirdly, although the legally enforceable debt was to the tune of Rs. 25 Lakhs, what was being repaid is an amount of Rs. 30 Lakhs for which there is no plausible explanation.

3 The learned Counsel for the respondent has stated that there was a transaction between the parties as the complainant happens to be a partner of Roll Well Enterprises. It is pertinent to note that the cheques issued in favour of the respondent were not issued from the account of the firm but from the personal account of the complainant. It was also further agreed that the interest would be paid separately.

4 It appears that the learned Magistrate had only considered that there was no prior intimation given. At the same time, it needs to be appreciated that it was incumbent upon the respondent to reply the notice and demonstrate that the cheque was presented for encashment without prior intimation. In view of the above discussion, the application seeking leave to appeal deserves to be granted.

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5 The application for leave to appeal is allowed. Leave to
appeal is granted.

6 Appeal is admitted.

7 Action under Section 390 of the Code of Criminal Procedure,
1973 be initiated.

8 The respondent No. 2 shall present himself before the
Metropolitan Magistrate's 43rd Court at Borivali, Mumbai within 3 weeks
from today and furnish bail bond to the satisfaction of the trial Court.
The respondent shall mark his presence before the Metropolitan
Magistrate once in 6 months on the date assigned by the concerned
Metropolitan Magistrate.

9 The application is disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]