

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Criminal Application (APPA) No. 318/2021

IN

Criminal Appeal No. /2021

Anoop s/o Niranjana Dodiya

..VS..

Swati w/o Anoop Agarkar

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri V.R. Deshpande, Advocate for the applicant/appellant

CORAM : VINAY JOSHI, J.

DATED : 03/08/2021

The applicant/appellant is seeking leave to challenge the order of acquittal passed in Summary Criminal Case No. 2329/2013 for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The applicant put up a case before the trial Court that the respondent has issued a cheque of Rs.3,00,000/- towards discharge of his legal liability. Since, the cheque was dishonoured, statutory notice was issued, which was served, but within stipulated period, it was not complied. It is pointed out that so far as the statutory compliances are concerned, the trial Court answered it in his favour. However, it is held that the defence is probable and accused is able to make out the reasonable doubt that the cheques were stolen and misused. In this regard, it is

pointed out that accused has filed a report against the applicant (complainant) alleging cheating and forgery relating to the same cheque and some other cheques. The applicant preferred Criminal Application (APL) No. 906/2017 under Section 482 of the Criminal Procedure Code, wherein the contentions raised by respondent were found to be incorrect. Hence, F.I.R. was quashed.

2. With assistance of learned Counsel for the applicant, I have gone through the impugned judgment. Though, the trial Court held that the applicant has proved the compliances, however, the defence was held to be probable. It is pointed out that the trial Court has not considered the statutory presumption and other related materials. The applicant has made out entertainable case. Hence, leave to file appeal is granted.

3. Appeal be registered.

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Issue notice to the respondent, returnable after four weeks.

JUDGE