

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

APPLICATION FOR LEAVE TO APPEAL (PVT.) NO. 5 OF 2023

Paris Plates, Nampur
Prop. Sandip Ramesh Deore

...Applicant

vs.

M/s. A.C. Construction Building
Contractor and Ors.

...Respondents

Mr.J.D.Khairnar, Advocate for the Applicant.
Mr.N.B.Patil – APP for the Respondent No.3-State.

CORAM : S. M. MODAK, J.

DATE : 2nd MARCH, 2023

P. C. :-

1. Heard learned Advocate for the Applicant-Complainant.
2. While acquitting the Respondent-Accused, the trial Court mainly given following reasons :-
 - (a) The debt or liability is not proved
 - (b) It is not proved that Respondent No.2 is a proprietor of Respondent No.1 – proprietary firm.
3. To prove the liability, apart from the Complainant, he has also

examined his servant Vijay Shitole. There were also bills / invoices tendered in evidence. Signature on the cheque is not disputed, so also, issuance of the cheque is not disputed. In spite of that, the trial Court held that the liability is not proved. The trial Court has overlooked the fact that the proprietary firm is not having separate existence from the proprietor. Interestingly, the trial Court in Para No.16 referred to the evidence of witness Balkrushna Salekar who is a Manager of Oriental Bank i.e. the banker of the Accused. He said that during the relevant period, no cheque was dishonoured. As against this, trial Court referred cheque memo at Exhibit-29 and Exhibit-30. On the basis of this evidence, trial Court concluded that dishonour is proved (Point Nos.2 to 4).

4. On prima facie reading, it appears that there are mistakes in the judgment of the trial Court. Who will be benefited can be seen after hearing the other side.

5. Special Leave to prefer an Appeal is granted.

6. Admit the Appeal.

7. Let notice be issued to Respondent Nos. 1 and 2 returnable on **6th April, 2023**. Learned APP waives notice for Respondent No.3-State.

8. Call record and proceeding.
9. An action be taken under Section 390 of the Code of Criminal Procedure, 1973 ["Cr.P.C."] against the Respondent No.2.
10. Application for Leave to Appeal is disposed of accordingly.

[S. M. MODAK, J.]