



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

CRIMINAL APPLICATION (APPA) NO. 244 OF 2023
IN
CRIMINAL APPEAL STAMP NO. 829 OF 2023

M/s A.S. Polymers Pvt. Ltd.
V/s
M/s Sun Plastics, thr. Proprietor M Prakash Mithulal Goyal

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

Court's or Judge's Order

Mr. Shyam Dewani, counsel for appellant/applicant.
Ms. S.O. Tapdiya, counsel for respondent.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 20/03/2024.

1. By preferring this application, the applicant/appellant is seeking leave to prefer an appeal against the order of acquittal.
2. Learned counsel for the applicant submitted that the trial Court had considered the cheque given as a security would not be out of purview of Section 138 of the Negotiable Instruments Act. Similarly, the defence of the post dated cheque has been ruled out by the Hon'ble Apex Court in the matter of **Ashok Badave vs Surendra reported in [2001 (3) SCC 726]** and **Goaplast vs Chico reported in [2003 CrLJ1723]**, at the same time, the trial Court while acquitting the accused recorded the contrary finding. In view of that, the appellant has many arguable points in the present appeal and therefore, the leave is to be granted.

3. Learned counsel for the respondent strongly opposed the application and submitted that as the appellant failed to prove the cheque was issued against the legal and enforceable debt. The trial Court has acquitted the respondent therefore, the application is devoid of merits.

4. Having heard learned counsel for the applicant and learned counsel for the respondent, perused the impugned judgment. Considering the submission made by the learned counsel for the appellant, who has pointed out from the judgment and there are contrary finding recorded by the trial Court while acquitting the respondent. Therefore, he has arguable points in the present appeal. Therefore, leave requires to be granted. Accordingly, I pass the following order:

- a] The criminal application is allowed.
- b] The leave to file appeal is granted.
- c] In view of Section 390 of the Cr.P.C. the respondent shall furnish the surety of Rs. 15,000/- with one solvent surety of like amount before this Court.

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1] Leave is granted to the appellant to file private paper-book.

2] The appeal be placed before the Court after filing of private paper-book and its verification.

[URMILA JOSHI-PHALKE, J.]