

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****BENCH AT AURANGABAD****CRIMINAL APPLICATION NO.3021 OF 2013**

Shambu Mahadeo Sugar and Allied  
Industries Ltd., Havargaon,  
Tq-Kallam, Dist-Osmanabad,  
Through its Authorized Signatory,  
Ashok Rambhau Thorbole,  
Age-35 years, Occu:Service,  
R/o-As Above.

**...APPLICANT**  
**(Orig. Complainant)**

**VERSUS**

Shahaji Ramrao Khaladkar,  
Age-55 years, Occu:Agri., & Business,  
R/o-Sanja Road, Osmanabad,  
Tq. & Dist-Osmanabad.

**...RESPONDENT**  
**(Orig. Accused)**

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Mr. M.P. Kale Advocate h/f. Mr. A.B.  
Tele Advocate for Applicant.  
Mrs. Rashmi S. Kulkarni Advocate h/f. Mr.  
Sanket S. Kulkarni Advocate for Applicant.

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**CORAM: A.I.S. CHEEMA, J.**

**DATE : 28TH NOVEMBER, 2014**

**ORAL ORDER :**

1. Heard learned counsel for both sides.  
Perused record.

2. Learned counsel for Applicant is submitting that there was tripartite agreement between the complainant, the Respondent - accused and son of accused, by which truck of the Respondent-accused was to be used for transportation and the son had taken responsibilities of getting the goods transported. Learned counsel for Applicant submitted that advance was taken but transportation was not completed to the extent of the advance and so for the outstanding amount, Respondent has issued cheque, which bounced and thus case was made out but the Magistrate acquitted the accused.

3. Learned counsel for the Respondent opposed the present Application submitting and

supporting the reasonings recorded by the trial Court. Learned counsel submitted that the documents were produced but they were not proved. According to her, even the tripartite agreement has not been proved. Accounts showing the outstanding amount were also not established. Thus, according to her, the debt or liability were not proved and the cheque was misused. According to the learned counsel, trial Court has rightly acquitted the accused, relying on the Judgments referred in the impugned Judgment.

4.           Going through the record, it appears that it was a commercial transaction and the learned counsel for Respondent was asked that if the amount was not outstanding, why the cheque was issued. Learned counsel for Respondent merely submitted that the cheque issued was misused. It appears that there is an arguable case. It would be appropriate to reconsider the evidence.

. As such leave is granted. The Application is allowed. Application be converted into Appeal.

5. Appeal is **Admitted**. The learned counsel for Respondent waives notice after admission of the Appeal.

6. Action under Section 390 of Cr.P.C. be taken in the trial Court, against Respondent-accused.

7. Paper Book be got prepared.

**[A.I.S. CHEEMA, J.]**