

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

CRIMINAL APPLICATION NO. 115 OF 2014

Shri Ramchandra Narayan Erande

.. Applicant

v/s.

Shri Shridhar Vardhe & Anr.

..Respondents

Ms. Chandana Salgaocar for the Applicant.

Mr.J.H.Ramugade, APP for the State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : OCTOBER 21, 2015.

P.C.

1. This is an application under Section 378(4) of Cr.P.C. seeking leave to file appeal against acquittal in SCC No. 11309 of 2010. The applicant was the complainant in the said case SCC. No.11309 of 2010 filed against the respondent no.1 for offence under Section 138 of the Negotiable Instruments Act.

2. The case of the applicant-complainant was that he had advanced to the respondent-accused hand loan of Rs.4 lakhs and that the respondent-accused had issued cheque dated 30.11.2009

towards repayment of the said loan. The said cheque was dishonoured for “insufficient funds”. A notice was issued to the respondent, despite which the respondent-accused did not make the payment. Hence, the complaint was lodged under Section 138 of the Negotiable Instruments Act.

3. The applicant-complainant adduced evidence, based on which the statement under Section 313 Cr.P.C. was recorded. A perusal of the statement under Section 313 Cr.P.C., which is placed on record reveals that the accused had admitted having issued the cheque, but had raised a defence that he had given it as security, against the loan availed by his brother-in-law Mr. Sanjay Deshpande and the same was mis-used by the applicant herein.

4. It can be seen that though notice was duly received by the respondent, none remained present on behalf of the respondent. With the assistance of the learned Counsel for the applicant, I have gone through the impugned order, as well as the notes of evidence and the other documents placed on record. Perusal of the impugned

order prima facie reveals that the learned Judge has not considered the scope of presumption under Section 139 of Negotiable Instruments Act. Arguable points are raised. Hence, application is allowed. Leave is granted. Appeal is admitted.

(ANUJA PRABHUDESSAI, J.)