

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

CRIMINAL APPLICATION NO. 406 OF 2012

Prithviraj Jaychand Oswal .. Applicant

v/s.

Neela Kulkarni & Anr. ..Respondents

Mr. Mandar Limaye for the applicant
Mrs. R.V. Newton, APP for respondent State

**CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED: 25th AUGUST, 2015.**

PC.

1. Heard.

2. None for the respondent no.1. By this application, the applicant, who was the complainant in Criminal Case No. 1125 of 2010 seeks leave to file an appeal challenging the impugned judgment and order dated 17.01.2012 whereby the learned Judicial Magistrate First Class, Kolhapur has acquitted the respondent no.1 for the offence punishable under Section 138 of the N.I. Act.

3. The case of the applicant was that the respondent no.1 - accused had issued a cheque for Rs.50,000/- towards payment of Share transaction. The respondent no.1 accused had not disputed having issued the cheque but had claimed that the husband had paid the said amount by issuing another cheque No.2547. The respondent no.1 accused had claimed that despite the payment, the applicant – complainant had misused the cheque.

4. Relying upon the account extract at Exh.64, the learned Magistrate has held that the respondent no.1 accused has rebutted the presumption under Section 118 and 139 of the N.I. Act. A perusal of the account extract at Exh.64 *prima facie* reveals that the said entries were not made regularly in the course of business transaction. The entry pertaining to cheque for Rs.50,000/- is made on 25.01.2010, when the cheque was allegedly realised on 23.01.2010. There are several over-writings in the said extract. *Prima-facie*, arguable points are raised.

5. Hence, the application is allowed in terms of prayer clause (a). Applicant is granted leave to file the appeal challenging the impugned judgment and order dated 17.01.2012 passed by the learned Judicial Magistrate First Class, Kolhapur in C.C. No.1125 of 2010.

(ANUJA PRABHUDESSAI, J.)