

Anand

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

CRIMINAL APPLICATION NO.128 OF 2013

Suryakant Dattatraya Buchade .Applicant

v/s.

Nilesh Prakasin Galange & anr. .Respondents

Mr.J.P.Kharge i/b. Mr.Vikas Mali, Advocate, for
the Applicant

Mr.Anand S. Patil, Advocate, for the Respondent
No.1

Mr.Rajesh More, APP, for the Respondent No.2 –
State

CORAM : SMT.ANUJA PRABHUDESSAI, J.

DATE : 15.10.2015

P.C.

. This is an application under Section 378(4) of the Code of Criminal Procedure for leave to appeal from an order of acquittal. The applicant herein was the complainant in S.C.C.No.16 of 2012 filed before the learned J.M.F.C., Palus, District – Sangli. The applicant/complainant had alleged that he had advanced friendly loan of Rs.1,50,000/- to the respondent No.1/accused. The respondent

No.1/accused had executed a promissory note on 29.06.2011 and had subsequently issued a cheque. The respondent No.1/accused had also issued a cheque dated 31.01.2012 for Rs.1,50,000/- towards repayment of the said loan amount. The said cheque was presented in the Bank on 31.01.2012 but same was dishonoured. Hence, it was re-deposited on 14.02.2012. The cheque was again dishonoured "for want of sufficient funds". By notice dated 01.03.2012 the applicant/complainant called upon the respondent No.1/accused to pay the cheque amount within 15 days. The respondent No.1/accused replied to the said notice and denied having taken any friendly loan and further claimed that he had given a blank signed cheque to the applicant/complainant in view of the proposal to start a partnership firm. Since the respondent No.1/accused failed to pay the cheque amount, the applicant/complainant filed proceedings under

Section 138 of the Negotiable Instruments Act, 1881.

2. Upon considering the evidence on record, the learned Magistrate has dismissed the complaint on the ground that the applicant/complainant had failed to prove the fact that the cheque was issued towards discharge of liability. It is to be noted that the respondent No.1/accused had admitted having handed over signed cheque to the applicant/complainant. Presumption in terms of Section 139 of the N.I.Act is that the said cheque was issued towards consideration. Prima facie, there is no evidence on record to rebut the said presumption.

3. In the light of above, arguable points are raised. The application is granted. Leave granted. The Appeal is admitted. The respondent

No.1/accused to furnish bail bonds of
Rs.15,000/- with one surety to the satisfaction
of the JMFC, Palus, District – Sangli.

(ANUJA PRABHUDESSAI, J.)