

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

CRIMINAL APPLICATION NO. 196 OF 2015
IN
CRIMINAL REVISION APPLICATION NO. 1282 OF 2013

Sandeep Ratilal Damania .. Applicant

v/s.

Mrs. Mahrukh Khushroo Jokhi & Anr. ..Respondents

Mr. Paras Vira for the applicant
Mr. Mangesh Patel for respondent no.1
Mr. Rajesh More, APP for respondent State

**CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED: 4th SEPTEMBER, 2015.**

P.C.

1. Heard learned Counsels for the respective parties and learned APP for the State.
2. The applicant herein was the complainant in C.C. No. 325/SS/2009 filed before the learned Metropolitan Magistrate, 14th Court at Girgaon, Mumbai under Section 138 of the N.I. Act.
3. The case of the complainant was that the respondent no.1-

accused was one of the partners of M/s. Cure Pharma, which was arrayed as accused no.1 in the said complaint. It was alleged that the respondent no.1 along with other accused nos. 2 to 5 were looking after day to day affairs of the accused no.1 firm. The applicant in the complaint further stated that as per the assurance given by the respondent no.1-accused and the accused no.4, the complainant had advanced loan to the accused-bank by cheque of Rs.2,50,000/- dated 04.10.2006. It was stated that the accused no.1 firm had issued cheque dated 22.03.2009 for Rs.2,50,000/- towards repayment of the said loan amount. The said cheque was dishonoured. A statutory notice was issued. However, since the accused failed to pay the amount, complaint under Section 138 of the N.I. Act came to be filed against the accused.

4. Considering the evidence on record and after hearing the learned Counsels for the respective parties, the learned Magistrate had convicted the respondent no.1 for the offence punishable under Section 138 of the N.I. Act. The said judgment was

challenged before the Sessions Court, Greater Bombay. Learned Counsel for the respondent no.1 had filed Revision Application being Criminal Revision Application No.1282 of 2013 before the Sessions Court, Bombay. The learned Sessions Judge vide judgment and order dated 12.01.2015 has allowed the revision application as against respondent no.1 and acquitted the respondent no.1 herein under Section 138 r/w Section 141 of the N.I. Act.

5. The applicant herein has filed this application seeking leave to challenge the said judgment. I have perused the record and considered the arguments advanced by the respective parties. Considering the fact that the accused was earlier convicted by the learned Magistrate and the said order has been set aside by the Sessions Court, Greater Mumbai, in my considered view, the matter needs to be looked into on merits. Arguable points are raised. Hence, leave is granted. Appeal is admitted.

6. The applicant to furnish bail bonds of Rs.10,000/- with one surety in the like amount before the Sessions Court, Greater Bombay.

7. Liberty is granted to the parties to move the Court, in case of settlement.

(ANUJA PRABHUDESSAI, J.)

Certificate

Certified to be true and correct copy of the original signed judgment / order.