

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

CRIMINAL APPLICATION NO. 226 OF 2015

M/s. Atit Textiles Industries Pvt. Ltd. .. Applicant

v/s.

M/s. Pacific Exim & Ors. ..Respondents

Mr. H.H. Nagi for the applicant

Mr. Cherin i/b Niranjana & Co. for respondent no.1

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

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

PC.

1. By this applications, the applicant-complainant has sought leave to challenge the judgment dated 26th February, 2015 in C.C. No. 2613/SS/2012 whereby the learned Metropolitan Magistrate, 7th Court, Dadar, Mumbai acquitted the respondent accused for offence under Section 138 of the N.I. Act.

2. The applicant was the complainant in the said criminal case filed under Section 138 of the Negotiable Instrument Act. Upon conclusion of the trial, the learned trial Court acquitted the

respondent-accused mainly on the ground that there is no notary register number on the power of attorney and the respondent accused had made part payment to the applicant and the said statement was not disputed by the applicant-complainant by filing any rejoinder. The learned trial Judge has also held that the claim was barred under money lenders act.

3. The learned Counsel for the applicant has placed before me copy of Practice Note No.38 issued by the High Court, by which directions have been given that all Power of Attorneys shall be accepted without insisting for serial number of Notary. The learned Counsel for the applicant has further relied upon the decisions of the Division Bench of this Court in the case of *Parekh Aluminex Ltd. Vs. M/s. Ashok Commercial Enterprises & Anr. the Appeal (L) No.252 of 2015* and the decision of the Single Bench in *Sohel Janmuhammed Memon & Ors. Vs. State of Maharashtra, 2006 All M.R. (Cri.) 2703* wherein it has been held that the advance given by Bill of Exchange does not constitute money lending transaction and does not attract bar

under the money lending act. *Prima-facie*, the learned Magistrate could not have drawn any adverse inference against the applicant for not denying the contents of the reply by way of rejoinder. The applicant has raised arguable points, which needs to be adjudicated.

4. Hence, the application is granted in terms of prayer clause (a).

(ANUJA PRABHUDESSAI, J.)