

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

CRIMINAL APPLICATION NO. 234 OF 2014

Ramchandra Bhiva Katale .. Applicant

v/s.

Arun Laxman Kulkarni & Anr. ..Respondents

Mr. G.N.Salunkhe for the Applicant.
Mr.J.H.Ramugade, APP for the State.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : AUGUST 26, 2015.**

P.C.

1. This is an application under Section 378(3) of the Cr.P.C. for leave to appeal against the judgment dated 20.03.2014 in Summary Criminal Case No. 110 of 2008 whereby the learned Judicial Magistrate First Class, Ajara has acquitted the accused for offence punishable under Section 138 of the Negotiable Instruments Act.
2. The case of the applicant-complainant was that the respondent no.1-accused had issued a cheque dated 29.2.2008 for sum of Rs.1,75,000/-towards legally enforceable debt. The said cheque was

presented in the bank on 12.3.2008, but it was dishonoured for “insufficient funds”. By statutory notice dated 4.4.2008 the accused was called upon to pay the cheque amount. The accused having failed to pay the said cheque amount, the applicant-complainant filed complaint under Section 138 of the Negotiable Instruments Act.

3. The accused on putting appearance had pleaded not guilty and had claimed to be tried. The defence of the accused was that of total denial. Upon considering the evidence adduced by the complainant, the learned Magistrate dismissed the complaint mainly on the ground that there were discrepancies in the Power of Attorney Exhibit 27 as well as the development agreement at Exhibit 28. The learned Magistrate further held that there was prima facie, no material to prove that the accused had issued the cheque on behalf of his father. The learned Magistrate also held that the debt if any was time barred and that the provisions of Section 18 of the Limitation Act were not attracted since there was no acknowledgement in respect of the time barred debt.

4. Learned Counsel for the applicant has placed reliance on the judgment of the Division Bench of this Court in ***Dinesh Choksi vs.***

Rahul Vasudeo Bhatt 2012(2) Mh.L.J. 130, wherein it has been held that the cheque issued for discharge of the debt which is barred by law of limitation is itself a promise within the meaning of Section 25(3) of the Contract Act. It is further held that the promise in the form of a cheque drawn in discharge of time barred debt or liability becomes enforceable by Section 25(3) of the Contract, and that such a cheque becomes “cheque drawn in discharge of legally enforceable debt as contemplated in explanation to Section 138 of the Negotiable Instruments Act.”. In the light of the said judgment the finding of the Magistrate that the debt was time barred is prima facie not justifiable. In my considered view, arguable points are raised and this is a fit case for granting leave to appeal. Hence, application is allowed. Leave to appeal is granted.

5. The respondent accused is directed to furnish bail bond of Rs.10,000/- with one surety in the like amount to the satisfaction of the learned Judicial Magistrate, First Class, Ajara District Kolhapur.

(ANUJA PRABHUDESSAI, J.)

CERTIFICATE

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