

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

CRIMINAL APPLICATION NO. 263 OF 2014

Shri Samarth Transport

.. Applicant

v/s.

The State of Maharashtra & Anr.

..Respondents

Mr. R.N.Kachave for the Applicant.

Mr.Niranjan Mundargi for the Respondent No.2

Mr.Rajesh More, APP for State.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : SEPTEMBER 11, 2015.**

P.C.

1. Heard.
2. By this application, the applicant seeks leave to appeal against the order dated 8.5.2014 in C.C.No. 156 of 2011 whereby the learned Judicial Magistrate, First Class, Pen, dismissed the complaint filed by the complainant under Section 138 of N.I.Act and acquitted the respondent no.2 for the offence punishable under Section 138 of the N.I.Act.
3. The case of the applicant-complainant in brief is that he had

advanced a loan of Rs. 5 lakhs to the respondent no.2 vide cheque dated 8.1.2011. The said cheque was dishonoured and he had issued the statutory notice. The applicant-complainant has alleged that despite receipt of the notice, the respondent no.2 accused did not repay the loan amount. Hence, he initiated proceeding under Section 138 of the Negotiable Instruments Act.

4. Upon service of summons, the respondent no.2 accused remained present and pleaded not guilty. Upon considering the evidence adduced by the applicant-complainant and considering the submissions of the respective counsels, the learned Magistrate has dismissed the complaint.

5. With the assistance of the learned Counsels for the respective parties, I have perused the record and the documents produced along with the records. It is noticed that one of the grounds on which the learned Magistrate has acquitted the accused is that there was no service of the statutory notice. It is to be noted that the complainant had alleged that the respondent no.2 accused had issued a cheque no.466887 dated 8.1.2011 drawn on the State Bank of India, Pen Branch, District Raigad, for Rs. 5 lakhs towards repayment of the

loan. The notice which was issued and which was produced by the applicant-complainant was in respect of cheque no.003990 dated 31.8.2010. The applicant-complainant has admitted in his cross examination that the said notice does not pertain to the subject cheque. Thus, there is no compliance of the mandatory requirement of Section 138 N.I.Act. Hence the learned Magistrate was justified in dismissing the complaint. The order passed by the learned Magistrate is neither illegal nor perverse. I do not find any reason to interfere with the same. Hence the application is dismissed. Leave is rejected.

(ANUJA PRABHUDESSAI, J.)

CERTIFICATE

Certified to be true and correct as per the original signed
judgment/order.