

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

**CRIMINAL APPLICATION NO. 385 OF 2015**

Mrs. Sangita Rikabchand Jain .. Applicant

v/s.

The State of Maharashtra & Anr. ..Respondents

Mr. Nilesh Masurkar for the Applicant.  
Mr.J.H.Ramugade, APP for the State.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.  
DATED : SEPTEMBER 03, 2015.**

**P.C.**

1. This is an application for leave to appeal against judgment dt. 8<sup>th</sup> June, 2015 in Summary Criminal Case No.11654 of 2013, whereby the learned 6<sup>th</sup> Judicial Magistrate, First Class, Thane has acquitted the respondent no.2 accused for the offence punishable under Section 138 of the Negotiable Instruments Act.

2. Heard learned Counsel for the applicant. Perused the impugned judgment as well as notes of evidence. The applicant was complainant in the Criminal Case No.11654 of 2013. It was the case

of the complainant that she had advanced friendly loan of Rs. 7 lakhs to the accused sometime in the year 2011, and that the accused had issued cheque dated 10.3.2013 for Rs. 7 lakhs towards repayment of the said loan amount. The said cheque was dishonoured with an endorsement “exceeds the arrangement”.

3. Despite statutory notice the respondent no.2 accused failed to repay the amount. Hence the applicant complainant lodged the complaint under Section 138 of the Negotiable Instruments Act.

4. The learned Magistrate has acquitted the respondent no.2 accused mainly on the ground that the applicant complainant has failed to prove that the said cheque was issued towards discharge of the legally enforceable debt or liability. In arriving at this finding the learned Magistrate has relied upon the statement of the applicant wherein she has admitted that she is a housewife and has no independent source of income. The learned Magistrate has further held that the applicant-complainant had stated that she had borrowed an amount of Rs.1,50,000/- from her daughter Mamta

(CW-2). However, the testimony of CW-2 further reveals that she also does not have any independent source of income. The complainant had claimed that an amount of Rs.3,50,000/- was advanced by her daughter and sister. However, the said fact is not reflected in the complaint. The learned Judge has further held that the applicant complainant has further admitted that she had never visited the house of the accused and that she did not know the address of the accused. She had further admitted that she did not know who had written the contents of the cheque. The learned Magistrate has also held that the disputed cheque at Exhibit 17 was of the year 2013, whereas the alleged loan was advanced in the year 2011. As against this, the evidence of the Bank Manager, who was examined by the accused reveals that the cheque book in respect of the disputed cheque was issued in the year 2008. The learned Magistrate therefore held that the defence of the accused that the complainant had misused the blank signed cheque was probable.

5. Having gone through the evidence of the complainant and the witnesses and on considering the findings recorded by the learned

Magistrate, I am of the considered view that the view taken by the learned Magistrate is a probable and justifiable. The order is not perverse or illegal and hence does not warrant any interference. Hence the application is dismissed. Leave is rejected.

**(ANUJA PRABHUDESSAI, J.)**

**CERTIFICATE**

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