

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

CRIMINAL APPLICATION (ALP) NO. 401 OF 2015

Abdul Haq Khan
Proprietor of Haq Trading Corporation .. Applicant

v/s.

State of Maharashtra & Anr. ..Respondents

Mr. Shrinath K. Dubey for the applicant
Mr. S.G. Shirsat for respondent nos. 2 and 3
Mr. Rajesh More, APP for the respondent State

**CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED: 28th OCTOBER, 2015.**

P.C.

1. This is an application filed under Section 478 of the Cr.P.C. seeking leave to appeal against the judgment of acquittal in C.C. No.2922/SS/2011, wherein the learned Magistrate, 59th Court, Kurla, Mumbai has acquitted the respondent no.2 accused for offence under Section 138 of the N.I. Act.

2. The case of the applicant-complainant in brief is that on 22.01.2011, he had supplied to the respondents-accused M.S.

Wire worth Rs.1,17,749/-. The respondent no.2-accused had issued a cheque dated 31.01.2011 towards the price of the said M.S. Wire. The said cheque was deposited in the bank and was dishnoured on 02.07.2011. The statutory notice was issued on 11.07.2011. The respondent no.2-accused did not make the payment and hence, a complaint under Section 138 of the N.I. Act came to be filed against the respondents accused.

3. Upon service of summons, the respondents accused put in their appearance, pleaded not guilty and came to be tried. The applicant complainant examined himself, the statement of the respondent no.3 accused came to be recorded under Section 313 of the Cr.P.C. The respondent no.2 accused did not adduce evidence. Nonetheless, from the tenor of cross-examination of the applicant-complainant, it is seen that the defence of the respondent no.2 accused was that the subject cheque was given towards security in respect of the past transaction and that the applicant complainant had misused the same and lodged a false

complaint under Section 138 of the N.I. Act.

4. The learned Magistrate upon considering the evidence adduced by the complainant, dismissed the complaint and acquitted the respondents accused mainly on the ground that the complainant had failed to prove that the subject cheque was issued towards discharge of legally enforceable debt. The learned Magistrate held that the defence raised by the respondent no.2 accused was probable and hence acquitted the accused for the offence under Section 138 of the N.I. Act.

5. With the assistance of the learned Counsel for the applicant, I have perused the notes of evidence and I have also gone through the impugned judgment and order. The PW-1 in his evidence deposed that he had sold to the respondents accused M.S. Wire. In the cross-examination, PW-1 has admitted that there was a transaction between him and the accused in the year 2006-2007 and again in the year 2007-08. He further admitted that there

was hot exchange of words between him and the accused during the said period. He has further admitted that the he does remember whether after the said incident, there was any transaction between him and the accused. It is to be noted that the applicant complainant has mainly relied upon the invoices at Exh.26. However, in his cross-examination, he has admitted that he had not obtained signature of the accused on the said invoice for having received the goods. He has stated that he had prepared delivery challans. He has stated that he does not remember whether they have obtained the signature of the accused on the said delivery challan, whether he had received the goods or even whether he had obtained the signature of the driver on the delivery challan in respect of the vehicle in which the goods were transported. He has stated that apart from the cheque, there is no other documents to prove that he had supplied any goods as mentioned in the invoice at Exh.26.

6. In the light of the above, in my considered view, the findings of the learned trial Judge that the defence is probable and cannot

be said to be illegal or perverse. I do not find any reason to interfere in the impugned judgment and order.

7. Hence, the application is dismissed. Leave is rejected.

(ANUJA PRABHUDESSAI, J.)