

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

**CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.38 OF 2017**

Bhavesh Solanki)...Applicant

V/s.

M/s. Elm Designs Pvt. Ltd. and Ors.)...Respondents

Mr. Laxman Kanal, Advocate for the Applicant.

Mr. S.V.Gavand, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 7th April, 2017.

P.C. :

This is an application for leave to appeal by the original complainant seeking to challenge the judgment and order dated 9.12.2016 passed by the learned Metropolitan Magistrate, Mumbai thereby acquitting respondents-accused for the offence punishable under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881.

2 Heard the learned advocate appearing for the applicant-original complainant. Perused the impugned judgment and order. It is seen that the complainant had taken a contract to

execute some civil work by the respondents-accused towards discharge of legally enforceable liability. A cheque was issued in favour of the applicant-original complainant and it was subsequently dishonoured for want of sufficiency of funds. Perusal of the impugned order does not show that issuance of cheque and signature thereon is disputed by the accused. However, the learned trial Magistrate found that ledger account produced on record which was a computer generated document was not accompanied by the certificate as envisaged by Section 65(b) of the Indian Evidence Act, 1872. Prima-facie, it appears that oral evidence of the complainant is lost sight of . The applicant has made out case for grant of leave. Hence, the order:

- (1) Leave granted.
- (2) The appeal is admitted. Memo of the application be construed as memo of the appeal.
- (3) Issue notice to respondents. The learned APP waives notice for the Respondent No.4-State.
- (4) Call for records and proceedings.

(5) In the meanwhile, action in terms of Section 390 of Cr.P.C. before the learned trial Court.

(A. M. BADAR, J.)