

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

CRIMINAL APPLICATION NO. 120 OF 2016

Shri Bhimarav Govindarav Pawar ..Applicant

v/s.

Shri Binesh Balakrishnan & Anr. ..Respondents

Mr.V.B.Tapkir for the Applicant.

Mr. Prashant V. Nayak for the Respondent No.1.

Mr.M.G.Patil APP for the Respondent-State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : NOVEMBER 15, 2017.

P.C.

1. By this application, the applicant herein has sought leave to challenge the judgment dated 28th January, 2016 in Summary Criminal Case No. 888 of 2013 whereby the learned Judicial Magistrate, First Class has acquitted the respondent herein for the offence under Section 138 of the Negotiable Instruments Act.
2. Heard the learned Counsel for the petitioner and the learned Counsel for the Respondent.
3. A perusal of the impugned judgment and the evidence on record prima facie reveals that the learned Magistrate has acquitted the accused mainly on the ground that the complaint was not filed within the period of limitation and secondly the complainant has failed to prove that the cheque was issued towards consideration. The records reveal that the subject cheque was dishonoured on 26.2.2013. The complainant had issued demand notice on

12.3.2013. The notice was sent by RPAD as well as by Courier. The record reveal that the intimation regarding the notice sent by RPAD was served to the accused on 15.03.2013, and the notice sent by Courier was served on 20.03.2013. The respondent had replied to the said notice on 18.4.2013. A perusal of the reply indicates that he has received the demand notice on or about 20.4.2013 and thereafter he had replied to the said notice. Considering the said notice as demand notice, prima facie the complaint would appear to be within limitation.

4. A perusal of the judgment indicates that the learned Judge had disbelieved the defence set up by the accused. A perusal of the judgment nowhere indicates that the learned Magistrate had considered the statutory provision under Section 118(a) and 139 of the Negotiable Instruments Act. Arguable points are raised. Hence leave is granted.

5. Appeal be registered.

6. Registry to comply with the provisions of Section 390 of Cr.P.C.

(ANUJA PRABHUDESSAI, J.)