

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

**CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.159 OF 2015**

A. Navinchandra Steels Ltd.)...Applicant

**V/s.
Bhuwalka Steel Industries Ltd.)...Respondent**

Mr. Sanjiv Punalekar, Advocate for the Applicant.

Smt. Pravina Thakkar, Advocate for R.Nos.1, 2 and 4.

Mr. A.R.Kapadnis,APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 15th MARCH, 2017.

P.C. :

This is an Application for leave to appeal challenging the acquittal of the Respondent- Original Accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 by the learned Metropolitan Magistrate, 50th Court, Vikroli, Mumbai vide judgment and order dated 30.1.2015.

2 Heard learned Advocate appearing for the Applicant/Original Complainant. He argued that steel ingots worth about Rs.4 Crores were supplied to Respondent

No.1/Original Accused No.1 by the Complainant and apart from part payment of some amount towards cost of steel ingots, 13 cheques for balance amount were issued by the Respondent/Original Accused No.1 towards payment of cost of steel ingots supplied by the Complainant to him. However, all those cheques were dishonoured and, therefore, complaint came to be filed after following necessary formalities. It is submission of the learned Advocate appearing for the Applicant/Original Complainant that issuance of cheques, signatures thereon as well as the fact that those were issued for discharging legally enforceable debts is not disputed but the complaint was dismissed by doubting power of attorney and by holding that cheques were issued by way of security towards payment of amount of material supplied. It is also held by the learned trial Court that cheque return memo by drawee bank is not produced on record.

3 It is seen that it is the case of the Applicant/Original Complainant that cheques were issued towards cost of material, which has already been supplied to Respondent/Original Accused No.1. In the light of this fact, one will have to examine whether

cheques were towards security. Material according to the case of the complainant was already received by the Respondent/Original Accused No.1. Similarly, burden of proof will be an issue to be decided so far as power of attorney is concerned. Cheque return memo is sent by the bank where the cheque is presented for collection. Therefore, case for grant of leave is made out and as such, the order:

- (1) Leave as prayed, is granted.
- (2) Admit.
- (3) Issue notice to Respondents. The learned Advocate Ms.Pravina Thakkar waives notice for the Respondents/Accused Nos.1,2 and 4. The learned APP waives notice for the Respondent No.7-State.
- (4) Call for Records and proceedings.
- (5) In the meanwhile, action under Section 390 of the Cr.P.C. before the trial Court.

(A. M. BADAR, J.)