

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO.183 OF 2015****WITH****CRIMINAL APPLICATION NO.184 OF 2015****WITH****CRIMINAL APPLICATION NO.185 OF 2015**

Chandrashekhar Shivajirao Pawar ...Appellant

Versus

KIBS Biotechnology Ltd. And Ors. ...Respondents

Mr.Ashok B.Taajne for the Appellant
Mr. Prashant Jadhav, APP for the State.

CORAM: SMT.ANUJA PRABHUDESSAI, J.

DATED: 24th AUGUST, 2017

PC:-

1. By this Application, the Applicant has sought leave to challenge the judgment dated 15th January, 2015 in Summary Criminal Case No.8486 of 2007 whereby, the learned Judicial Magistrate, First Class, Court No.7, Nashik has acquitted the Respondent for the offence punishable under Section 138 of the Negotiable Instruments Act.

2. Heard the learned Counsel for the Applicant and the learned APP for the Respondents. I have perused the records and considered the submissions advanced by the learned Counsels for the respective parties.

3. It is not in dispute that the Respondent herein had issued the subject cheque.

4. The defence of the Respondent was that he was forced to sign the said cheque. He has further stated that the Applicant herein had stolen the said cheques. The Respondent had also alleged that there was no legally enforceable debt or legal liability.

5. The learned Magistrate has held that the form No.23AC (Exh.50) produced by the Respondents reveals that the unsecured loan was not due as payable to the Applicant by the Company. The learned Magistrate therefore held that the

Respondent herein has rebutted the presumption arising from Section 139 of the Negotiable Instruments Act.

6. Prima facie there is no material on record to indicate that the Respondent herein had lodged a complaint against the Applicant for stealing the cheque or for forcing him to sign the cheque. As regards the form No.23AC the records prima facie reveal that the complainant was not at all cross-examined on the said document. The said document was produced by the Respondent by an application filed after recording of the Statement under Section 313 of the Code of Criminal Procedure. The Complainant did not have opportunity to meet the said defence or to explain the said document.

7. Considering all these aspects in my considered view, arguable points are raised. The matter needs consideration. Hence, leave is granted to challenge the Appeal in terms of

prayer clause 'a'. Appeal be registered after carrying out necessary amendments.

8. The learned APP for the Respondent waives service. Call for Records and proceedings.

9. The Respondent to execute bail bonds to the tune of Rs.20,000/- with one surety to the like amount to the satisfaction of Judicial Magistrate, First Class, Nasik.

(ANUJA PRABHUDESSAI,J)