

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

CRIMINAL APPLICATION NO.198 OF 2015

Supreme Offshore Constructions and
Technical Services Ltd.

...Applicant

Versus

The State of Maharashtra & Ors.

...Respondents

.....

Mr. Jaideep Lele for the Applicant.

Mr. Y.M. Nakhwa, APP for the Respondent No.1.

Mr. Gajendra Jadhav with Mr. A.N. Joshi for the Respondent
Nos.2 and 3.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 1st NOVEMBER, 2017.

P.C.:-

Heard Mr. Jaideep Lele, learned counsel for the Applicant,
Mr. Gajendra Jadhav, learned counsel for the Respondent Nos.2 and 3
and Mr. Y.M. Nakhwa, APP for the Respondent No.1-State.

2. The Applicant was the complainant in C.C.
No.3165/SS/2007. He has sought leave to challenge the judgment and
order dated 25th April, 2014 whereby the learned Metropolitan
Magistrate, 44th Court, Andheri has acquitted the Respondent Nos.2
and 3 of the offence under Sections 138 and 141 of the Negotiable

Instruments Act.

3. Perused the records and considered the submissions advanced by the learned counsels for the respective parties.

4. The records reveal that the Applicant herein had filed a complaint under Section 138 of the Negotiable Instruments Act in respect of dishonour of cheque No.038707 dated 22nd January, 2007 for sum of Rs.75,00,000/- which was allegedly issued by Respondent Nos.2 and 3 and which was dishonoured with remarks “funds insufficient” and “exceeds arrangements”. The Applicant had served statutory notice. Though the learned counsel for the Respondent has denied having received the said notice, the learned Judge has recorded a finding that the said notice was returned unclaimed. The learned Judge has not considered whether there was deemed service of notice, which was essentially a question of fact and ought to have been considered in the light of the evidence on record.

5. A perusal of the judgment further reveals that the learned Magistrate had formulated three questions which are reproduced in paragraph 8 of the judgment. The said questions have been answered

in negative only on the ground that the Applicant- complainant was not an authorised person to file a complaint on behalf of the Company. The learned Magistrate has not considered the evidence, which was relevant to deal with question Nos.1, 2 and 3 formulated in paragraph 8 of the impugned judgment.

6. Having considered the impugned judgment vis-a-vis the findings recorded in the impugned judgment, in my view arguable points are raised. The material on record requires a deeper scrutiny and re-appreciation of evidence. Hence, the application is allowed. Leave is granted to challenge the judgment. Appeal be registered.

(ANUJA PRABHUDESSAI, J.)