

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

**CRIMINAL APPLICATION NO.214 OF 2014
(For leave to file Appeal)**

Noel Jacinto D'Souza

...Applicant

Versus

Mr. Narendra Jeevanlal Sharma &
Anr.

...Respondents

.....

Mr. Kishor Patil i/b. Mr. Rajeev S. Matkar for the Applicant.

Ms Gajendra Kashinath Jadhav for the Respondent No.1.

Mr. P.H. Gaikwad, APP for the Respondent No.2-State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 10th OCTOBER, 2017.

P.C.:-

By this application the Applicant herein, who was a complainant in C.C. No.70/SS/2009 has sought leave to challenge the judgment dated 26th March, 2014 whereby the Respondent No.1-original accused has been acquitted under Section 138 of the Negotiable Instruments Act.

2. Heard Mr. Kishore Patil, learned counsel for the Applicant and Ms Gajendra Jadhav, learned counsel for the Respondent No.1. Perused the records.

3. Records prima facie indicate that the Applicant herein had lodged a complaint for dishonour of cheques dated 13th September, 2008 and 16th September, 2008 for total sum of Rs.6,33,000/-. The learned Magistrate has acquitted the Respondent No.1-accused mainly on the ground that the Applicant-complainant had not proved that the cheques were issued towards discharge of liability. Perusal of the complaint vis-a-vis evidence and the statement under Section 313 of the Code of Criminal Procedure reveals that the Respondent No.1 had admitted having issued the said cheques. Prima facie there is no evidence to rebut the presumption arising under the relevant provisions of the Negotiable Instruments Act. Considering the above facts and circumstances, leave is granted. The Appeal be registered.

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

(ANUJA PRABHUDESSAI, J.)