

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.450 OF 2013
WITH
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CRIMINAL APPLICATION NO.451 OF 2013**

SHRI KHYALILAL GANESHLALJI JAIN)...APPLICANT

V/s.

MRS.CELINA KUMAR FERNANDES & ANR.)...RESPONDENTS

Mr.Manish Jain i/b. Mr.S.M.Jain & Associates, Advocate for the Applicant.

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

None for Respondent No.1.

CORAM : A. M. BADAR, J.

DATE : 23rd FEBRUARY 2017.

P.C. :

1 These are applications for grant of leave to appeal for challenging the judgment and order of acquittal of respondent no.1 from the offence punishable under Section 138 of the Negotiable Instruments Act.

2 Heard the learned advocate appearing for the applicant. None appeared for respondent no.1, though served.

3 Perused the impugned judgment and order of acquittal passed by the learned JMFC, Court No.7, Kalyan. The learned trial court came to the conclusion that cheques were issued by the accused as a security for refund of loan after 2-3 days of payment of hand-loan. But still, the complaint came to be dismissed by holding that cheques were issued as a security, and therefore, case does not fall within four corners of Section 138 of the Negotiable Instruments Act. Similarly, it is also held that date of payment of the hand-loan is not mentioned and it is fatal to the prosecution. My attention is drawn to the receipt at Exhibit 18 before the learned trial court which reflects payment of the hand-loan and consequently, issuance of cheques towards security for refund of hand-loan.

4 In this view of the matter, the applicant has made out a case for grant of leave, and therefore the order :

- i) Leave granted.
- ii) The application for grant of leave to appeal be considered as Memo of Appeal.
- iii) Admit.
- iv) Notice to respondents.
- v) Learned APP waives notice for respondent no.2 – State.
- vi) Call for Record and Proceedings.
- vii) In the meanwhile, action under Section 390 of the Code of Criminal Procedure before the learned trial court.

(A. M. BADAR, J.)