

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.412 OF 2014
(For Leave to Appeal – Private)**

Mohan Khubchand Thakur ... **Applicant**
V/s.
Vishal H. Gupta & Anr. ... **Respondent**

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Mr.Rizwan Merchant, Advocate for the Applicant.

Mr.S.B.Shetye, Advocate for the Respondent No.1.

Mrs.N.S.Jain, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 24th August 2017.

P.C. :

1 Heard the learned Advocate for the Applicant as well as the learned Advocate appearing for the Respondent No.1. The learned Additional Public Prosecutor appearing for the Respondent No.2.

2 *Prima facie*, it is seen that the cheque dated 21/04/2007 for an amount of Rs.50,00,000/- came to be issued by the Respondent No.1 in favour of the present Applicant. The learned trial Court has held that presumption as envisaged by the

Negotiable Instruments Act, 1881 is not rebutted by preponderance of probabilities or by adducing evidence by the defence. In this contest, observation of the learned trial Court in Paragraph 20 are material. Hence, the matter deserves consideration and therefore, the Order :

- (i) Leave, as prayed, is granted.
- (ii) The copy of the Application be treated as Memorandum of Appeal.
- (iii) Necessary amendments be carried out forthwith.
- (iv) Issue notice to the Respondents.
- (v) The learned Advocate Mr.Shetye waives notice for the Respondent No.1.
- (vi) The learned Additional Public Prosecutor wavier notice for the Respondent/State.
- (vii) The trial court to take action under Section 390 of the Code of Criminal Procedure, which should result in releasing the respondent No.1 on bail.
- (viii) Call for Record and Proceedings.

(A.M.BADAR J.)