

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH : NAGPUR**

**Criminal Appeal No. 76 of 2014**

(Tulsidas s/o. Pundlikrao Shende & Anr. Vs. Chandrashekhar s/o. Bhikaji Kamble)

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders or directions  
and Registrar's orders

Court's or Judge's orders.

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Shri. P.K. Mishra, counsel for appellants.

**CORAM : ROHIT B. DEO, J.**

**DATE : 07.08.2017.**

Heard Shri. Mishra for the applicant.

This is an application under Section 374(4) of the Criminal Procedure Code, 1973 seeking leave to appeal against the judgment of acquittal in Criminal Case No. 9404 of 2011 dated 26.2.2013 delivered by the Judicial Magistrate First Class (Special Court u/s. 138 of Negotiable Instruments Act, 1881).

The learned counsel for the applicant, in support of the prayer for leave to appeal would submit that the learned Trial Court has committed a serious error in holding that the accused successfully rebutted the presumption under Section 118(a) and 139 of

the Negotiable Instruments Act, 1881 only for the reason in Exh. 29 which is the statutory notice the existing liability alleged was towards a hand loan transaction and in the complaint filed before the Court and the evidence adduced, a case was made out that the cheque was issued towards refund of earnest consideration.

The learned counsel would further urge that the accused did not step into the witness box nor did he examine any witness to rebut the presumption. The learned counsel invited the attention of this Court to the findings recorded by the learned Trial Court, most of which are according to the learned counsel in favour of the complainant. He would urge that no material was brought on record to suggest that the accused was not the author of the cheque.

The learned Trial Court has come to a conclusion that the accused has, on the touch stone of preponderance of probabilities

successfully rebutted the presumption under Section 118(a) and 139 of the Negotiable Instruments Act, 1881. The learned Trial Court takes note of the fact that in the statutory notice (Exh. 29) issued by the complainant, it was alleged that an amount of Rs. 1 lac was due and payable to the complainant towards hand loan extended to the accused. However, the complaint came to be filed on the allegation that there was an agreement to sale of shop block which the accused did not honour and pursuant to a complaint lodged by the complainant in Jaripatka Police Station, there was a settlement between the parties pursuant to which the cheque for Rs. 55,000/- was issued towards refund of the earnest amount. Although, the accused has not examined himself nor has examined any witnesses, the defence which can be culled out from the statement recorded under Section 313 of the Criminal Procedure Code is that the cheque

was issued as a security in relation to a loan transaction. It is too well settled that the accused need not adduce evidence to rebut the presumption under section 118(a) or 139 of the Act and that such presumption can be rebutted on the strength of the material produced by the complainant or the material which has come on record during cross examination of the complainant or his witnesses.

The view taken by the learned Trial Court is an imminently plausible view and is certainly not perverse. In view of the well recognized limitation of the appellate jurisdiction when order of acquittal is assailed, I am not inclined to grant leave to appeal.

Consequently the appeal is rejected.

**JUDGE**

*Belkhede*