

*Nalawade*FARAD CONTINUATION SHEET No.IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTIONCRIMINAL APPLICATION NO. 198 OF 2016
Balwant Shripati Patil vs. Gajanan S.Chougule and anr.

Office Notes, Office Memorandum of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
--	---------------------------

Mr.Chetan Patil for the applicant.

Ms. R.M.Gadhavi, APP. for the Respondent-State.

Mr.A.A.Karande for Respondent No.1.

CORAM :A.S.GADKARI, J.

DATE : 15th March, 2018

P.C.

1. This is an application under Section 378(4) of the Cr.PC. for leave to file appeal against the Judgment and Order dated 10.5.2016 passed by the 7th Judicial Magistrate First Class, Kolhapur in SCC No 3863 of 2014 thereby acquitting the respondents for the offence punishable under Section-138 of the Negotiable Instruments Act.

2. Heard the learned counsel for the respective parties at length and perused the record.

3. The record clearly indicates that the applicant has failed to establish the basic fact that, he in fact had advanced hand loan of Rs.3,26,000/- to the respondent. No documents to that effect have been produced by the applicant on record. As a

matter of fact, the applicant in his cross examination has given an admission that he does not have any document to prove the said fact that he had in fact advanced hand loan to the respondent. The defence of the respondent is two fold that, there is no legally enforceable debt or liability for issuance of the cheque in question and by taking undue advantage of the close friendship, the respondent had stolen the cheque in question and misused it for instituting the present complaint. After perusing the record, this Court is of the view that the respondent is successful in rebutting the presumption under Section-139 of the Negotiable Instruments Act.

4. After perusing the entire record, this Court is of the considered opinion that the view adopted by the Trial Court is a reasonable and probable view in the facts and circumstances of the present case.

5. No case for grant of leave is made out.

6. Application is accordingly rejected.

(A.S.GADKARI, J.)