

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No. 30 OF 2014
(FOR LEAVE TO FILE APPEAL AGAINST ACQUITTAL)

Machhindra Mahadeo Chikhalkar ...Applicant
Vs.
Shivaji Krishna Rambhare and Anr. ...Respondents

Mr. Suraj Naik i/b. R.D. Suryawanshi for Applicant
Mr. Manoj G. Patil for Respondent No.1
Mr. P.H. Gaikwad – Patil – APP for the State

CORAM : PRAKASH D. NAIK, J.
DATE : 16 JANUARY, 2018.

P.C. :-

1. This is an application seeking leave to file an appeal against the judgment and order dated 3rd December, 2013 passed by the Learned Judicial Magistrate, First Class, Court No.4, Ichalkaranji. The Applicant is the Original Complainant, who had filed a complaint under Section 138 of the Negotiable Instruments Act. The Respondent-Accused was acquitted by the Trial Court.

2. It is submitted by the learned Advocate for the Applicant that the Trial Court has erroneously acquitted the accused though there is a sufficient evidence to establish the case of the Complainant. It is submitted that the accused has failed to rebut the presumption. It is submitted that the defence of the Accused was that the cheque was stolen, which was not established. The accused has not examined himself.

3. Learned counsel for Respondent No.1 has submitted that the Trial Court has assigned the cogent reasons. In the cross examination of the Complainant, the Applicant has rebutted the presumption. It is submitted that these circumstances put on record clearly indicate that there is no occasion to the accused to issue the cheque. It is, therefore, submitted that the leave may not be granted.

4. Arguable questions are raised in this application and, therefore, leave is required to be granted. Hence, I pass the following order :

ORDER

- (i) Appeal is admitted.
- (ii) Call for record and proceedings.

[PRAKASH D. NAIK, J.]