

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.89 OF 2017
(For Leave to Appeal)
IN
CRIMINAL APPEAL NO. OF 2017**

M/s.Heranba Industries Ltd.

.. Applicant

Vs.

Augustin Joseph & Anr.

.. Respondents

.....

Mr.O.S. Kutty, Advocate for the Applicant.

Mr.Jamshed Ansari, Advocate for Respondent No.1.

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

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CORAM : PRAKASH D. NAIK, J.

DATED : FEBRUARY 23, 2018.

P.C. :

This is an application seeking leave to file an Appeal against the judgment and order of acquittal dated 29th December, 2016, passed by the learned Metropolitan Magistrate 43rd Court, Borivali, Mumbai. Applicant is the original complainant. Complaint was filed for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. Cheque issued by the accused for an amount of Rs.8,52,834/-, was dishonoured. Trial Court had acquitted the accused primarily on the ground that the complainant has failed to establish that the cheques were issued in discharge of liability.

2 Learned advocate for the applicant submits that there was voluminous evidence before the Court to establish the liability. Trial Court has wrongly proceeded on the basis that the documents are not proved in accordance with the provisions of the Evidence Act. It is submitted that the trial Court has wrongly assumed that the provisions of the Evidence Act, relating to the electronic evidence and that the complainant has failed to prove the documents in accordance with Section 65 of the Evidence Act.

3 Learned advocate for the respondent submits that there was no evidence that the goods were delivered and that the complainant has not established its case by any documents. Trial Court has appreciated the evidence in proper perspective and had acquitted the accused which do not require any interference.

4 The questions raised by both parties are required to be considered at the time of final hearing. In the circumstances, an issue involved in this case. Case is made out for grant of leave.

:: ORDER ::

- (i) Leave granted
- (ii) Appeal admitted;
- (iii) Call for record and proceedings.

(PRAKASH D. NAIK, J.)