

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

CRIMINAL APPLICATION NO. 49 OF 2016

Fakir Ahmed Abdulla Khan

... **Applicant**

V/s.

Ganpat Sonu Kadam & Anr.

... **Respondents**

Mr. Osman Chishty for the Applicant.

Mr. Vivek Salunke for the Respondent No.1.

Mrs. Anamika Malhotra APP for the Respondent/State.

CORAM : A.S.GADKARI, J.

DATE : 28th FEBRUARY, 2018

P.C.:

. This is an application under Section 389(4) of the Cr.Pc. for leave to file Appeal against the Judgment and Order dated 28.12.2015 passed by the Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai.

2 The complaint under Section 138 of the Negotiable Instruments Act was filed by the Applicant. As the Applicant has failed to produce on record the acknowledgement duly signed by the Respondent about the receipt of notice under Section 138 of the Negotiable Instruments Act, the Trial Court was pleased to dismiss the said complaint and acquit the Respondent No.1 for non compliance of said mandatory provision.

3 Perused the record.

The record clearly indicates that the Applicant has failed to establish the basic ingredients of Section 138 (b) and (c) of the Negotiable Instruments Act, though it was obligatory on the part of the complainant to prove the said fact of not only issuance of notice under Section 138 of the Negotiable Instruments Act, but also receipt of notice by the Respondent/Accused and its acknowledgement before the Court conducting trial. As the basic ingredients contemplated under Section 138 of the Negotiable Instruments Act are not complied with by the Applicant, the Trial Court has dismissed the said complaint and acquitted the Respondent.

4 After perusing the entire record, this Court is of the view that, the view taken by the Trial Court is probable in facts and circumstances of the present case. There is no error committed by the Trial Court either in law or on facts while passing the impugned judgment and order.

5 The Application is accordingly, rejected.

(A.S.GADKARI, J.)