

Dond

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

**CRIMINAL APPLICATION NO. 101 OF 2013
WITH
APPP NO. 646 OF 2015**

Pragat Enterprises Bolthan

..Applicant

Vs

Punam Fertilizers & Anr.

..Respondents

Mr. Javed R. Shaikh for applicant.

Mr. A.R. Kapadnis, APP for State.

CORAM : A.S.GADKARI, J.

DATE : 2nd MAY 2018.

P.C.:

1] This is an application under Section 378 (4) of Cr. P.C. seeking leave to file an appeal against the Judgment and Order dated 18th December 2012 passed in Summary Criminal Case No. 595 of 2005 by the Judicial Magistrate First Class, Nandgaon, thereby acquitting the respondent No.1 from the offence punishable under Section 138 of the Negotiable Instruments Act.

2] Heard the learned Counsel for the applicant. Perused the record.

3] The evidence on record clearly indicates that, the applicant has failed prove the basic fact that he in fact had sold and supplied fertilizers on demand to the respondent No.1. The applicant has also failed to produce any evidence on record, thereby even remotely it can be inferred that the applicant had in fact supplied the goods/fertilizers to the respondent No.1 and towards the lawful liability or debt the cheque in question was issued by the respondent No.1. It is the defence of the respondent No.1 that, it was having various transactions with the applicant and he had already paid the amount involved in the transaction to the applicant. That the cheque in question was issued as security towards other transaction which has been misused by the applicant. I find substance in the defence of the respondent No.1. It further appears from the record that, the respondent No.1 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 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 to file appeal is made out.

Applications is accordingly rejected.

6] In view of dismissal of the Criminal Application Nos.101 of 2013, Criminal Application No.646 of 2015 does not survive and the same is accordingly disposed off.

(A.S.GADKARI, J.)