

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

CRIMINAL APPLICATION NO. 71 OF 2018

Mr. Nandu Balwant Shinde

... **Applicant**

V/s.

The State of Maharashtra & Anr.

... **Respondents**

Mr. Anil Patil for the Applicant.

Mr. V.V. Gangurde, APP for the Respondent/State.

CORAM : A.S.GADKARI, J.

DATE : 07th MARCH, 2018

P.C.:

. This is an application under Section 378(4) of Cr.P.C. for leave to file Appeal against the judgment and order dated 20.07.2017 passed by the learned Judicial Magistrate First Class, Kagal, District Kolhapur in Summons Criminal Case No. 93 of 2014 thereby acquitting Respondent No.2 for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

2 The Respondent No.2 has been acquitted by the Trial Court on the ground that the Applicant has failed to prove the basic fact that the cheque in question was issued by the Respondent No.2 towards his lawful liability or debt. It is the case of the Applicant that he had invested a sum of Rs.2,42,000/- with the company of Respondent No.2 namely Himbjs Holidays Pvt. Ltd. and towards repayment of the said investment, the cheque in dispute was issued by the said

Himbjs Holidays Pvt. Ltd. in favour of the Applicant which was dishonoured on presentation.

3 The record clearly indicates that the Applicant did not implead the said company as a necessary party to the complaint and the Respondent No. 2 in his individual capacity has been impleaded as an accused in the complaint. The said Himbjs Holidays Pvt. Ltd. being an entity and/or firm registered under the provisions of the Companies Act, it was necessary for the Applicant to implead the said company as Respondent accused. This is an additional ground for rejection of the complaint filed by the Applicant at his threshold which fact has not been taken into consideration by the Trial Court in the impugned order.

4 After perusing the 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. No case for grant of leave is made out.

5 Application is accordingly, rejected.

(A.S.GADKARI, J.)