

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

**CRIMINAL APPLICATION NO.162 OF 2017
WITH
CRIMINAL APPLICATION NO.163 OF 2017**

M/s.Kamlarya Engineers & Fabricators .. Applicant

Vs.

M/s.Patel Profiles Pvt. Ltd. & Ors. .. Respondents

.....

Ms.Sadhna Kumar, Advocate for the Applicant.

Mr.Mandar Patil, Advocate for Respondent No.1.

Ms.R.M. Gadhvi, APP for the Respondent – State.

.....

CORAM : PRAKASH D. NAIK, J.

DATED : FEBRUARY 14, 2018.

P.C. :

The applicant is the original complainant. The applicant in both these applications is complainant. Complaints were filed for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. Trial Court vide judgment and order dated 24th February, 2017, acquitted the accused for the said offence in both the complaints. Learned advocate for the applicant submits that the observations of the trial Court are contrary to the evidence on record. Trial Court observed that the complaint was filed by one Brijendra Kumar Bhagat. It is submitted that the said person had filed complaint as authorized

representative and known as a power of attorney holder. It is also submitted that the defence of the accused was that the cheques were issued by way of security which is unsupported by any evidence.

2 It is further submitted that the judgment passed by the trial Court in both these matters suffers from various infirmities and the evidence on record was not appreciated in proper perspective.

3 Learned advocate for the respondent had argued that the complainant has failed to establish its case. The liability is not proved. The cheques were issued by way of security. The invoices relied upon by the complainant does not bears signature of the accused.

4 Considering the issues involved in the matter, I am of the opinion that the arguable questions are raised for grant of leave. The issues raised by both the parties are required to be considered at the stage of final hearing.

5 Hence, I pass the following order:

:: ORDER ::

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

(PRAKASH D. NAIK, J.)