

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

CRIMINAL APPLICATION NO.114 OF 2018

Mr. Milind Manohar Jadhav

... Applicant

V/s.

Mr. Dinesh Suresh Narote & Anr.

... Respondents

Mr. Prakash Bhatkar for the Applicant.

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

CORAM : A.S.GADKARI, J.

DATE : 22nd MARCH 2018

P.C.:

1. This is an application under Section 378(4) for leave to file appeal against the Judgment and Order dated 16.11.2013 passed in Summary Criminal Case No.373 of 2013, by the learned Judicial Magistrate First Class, Deorukh, thereby acquitting Respondent No.1 from the offence punishable under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as the "N.I.Act").

2. Heard the learned counsel for the applicant and perused the record.

3. The evidence on record clearly indicates that, the demand notice as contemplated under Section 138(b) of the N.I.Act was not served

upon Respondent No.1 by the applicant. That, the applicant is a sub-contractor and Respondent No.1 is a contractor. That, the applicant has failed to prove the basic fact that, Respondent No.1 had infact given a sub-contract to the applicant and after completion of the said work, towards its consideration, the Respondent No.1 had issued the cheque in question.

4. It further appears from the record that, it is the specific defence of the Respondent No.1 that, he and applicant were good friends and during the said period, the applicant had taken one cheque from Respondent No.1 as a security and the same is misused by the applicant. After perusing the record, I find substance in the defence of Respondent No.1.

5. 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.

No case for grant of leave to file appeal is made out.

6. Application is accordingly rejected.

(A.S.GADKARI, J.)