

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO. 155 OF 2018**

M/s. Inkswipe Consulting LLP

....Applicant.

Vs.

Sherali Saeed Sardar & Anr.

....Respondents.

Mr. B.G. Tangsali i/by Mr. Ajay Tripathi for the Applicant.

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

CORAM : A. S. GADKARI, J.

DATE : 19th APRIL, 2018.

P.C.:-

This is an Application under Section 378 (4) of Cr. PC. for leave to file Appeal against the Judgment and Order dated 2nd February, 2018, passed by the learned Metropolitan Magistrate, 63rd Court, Andheri, Mumbai in C.C. No.1162/SS/2016, thereby acquitting the Respondent No.1 from the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

2 Heard Mr. Tangsali, the learned counsel for the Applicant.
Perused the record.

3 The Applicant is the Original Complainant.

It is the case of the Applicant that, the Respondent No.1 was the employee with the Applicant Company and as per the terms

and conditions of the agreement of employment, if the Respondent No.1 leaves the services of the Applicant within 24 months from the date of employment or remains absent from the job, the Applicant was entitled to claim the compensation from the Respondent No.1. As the Respondent No.1 left the job, prior to the expiry of the said period mentioned in the agreement, it is the case of the Applicant that the Respondent No.1 had issued the cheques in question which were dishonoured on presentation.

4 The evidence on record indicates that, at the time of execution of agreement of employment, the cheques in question were taken by the Applicant from the Respondent No.1 towards security and after the Respondent No.1 remained absent from the job, the said cheques were deposited for encashment. The evidence further indicates that before presentation of the said cheques, no intimation in writing was given to the Respondent No.1. It is the specific defence of the Respondent No.1 that the said cheques were taken from him by the Applicant towards the security/guarantee for performing the agreement of employment and the same have been misused by the Applicant. It is the further defence of the Respondent No.1 that, as a matter of fact, there was no liability at his end towards the Applicant

and the Applicant has misused the said cheques by its presentation.

I find substance in the defence of the Respondent No.1.

5 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 to file Appeal is made out.

6 Application is accordingly rejected.

7 At this stage, the learned counsel appearing for the Applicant submitted that the rejection of grant of leave may not be construed as prohibiting the Applicant from adopting other legal remedies available at its end under the Civil law. It is made clear that, this Court has not adjudicated the civil liability or tortuous liability of the Respondent No.1, in the present proceedings.

(A.S. GADKARI, J.)