

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

CRIMINAL APPLICATION NO.278 OF 2013

Karnick Pharma Pvt. Ltd.

... **Applicant**

V/s.

The State of Maharashtra & Ors.

... **Respondents**

Mr. Raikumar Sharma i/by A.S.Khan & Associates for the Applicant.

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

CORAM : A.S.GADKARI, J.

DATE : 28th MARCH 2018

P.C.:

1. This is an application under Section 378(4) of Cr.P.C. for leave to file appeal against the Judgment and Order dated 02.04.2013 passed in Criminal Case No.2118 of 2010 by the learned 4th Judicial Magistrate First Class, Vashi, Navi Mumbai, thereby acquitting Respondent Nos.2 and 3 for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

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

The record clearly indicates that, the notice issued by the applicant dated 18.04.2010 was received by the respondent-accused on 21.04.2010 and it was incumbent on the part of the applicant to file a complaint on or before 06.06.2010. However, the applicant has filed the present

complaint beyond the period of limitation on 24.06.2010. It is the contention of the applicant that, a second notice dated 18.04.2010 was served upon the respondent and thereafter the present complaint is filed on 24.06.2010, which is within the limitation.

The record further clearly reveals that to the notice dated 18.04.2010, the respondent had given reply to it, and therefore, there is no occasion for the applicant to address second notice to the respondent and no explanation about the same has been offered by the applicant.

3. It appears to this Court that, only with a view to overcome the period of limitation, the applicant had issued the said purported second notice, which is not commensurate with the provisions of Negotiable Instruments Act, 1881. It is thus undoubtedly clear that, the complaint filed by the applicant was beyond the period of limitation.

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.

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

5. Application is accordingly rejected.

(A.S.GADKARI, J.)