

*Nalawade*FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 215 OF 2016
Sterling Infra vs. M/s. ISIS Biotechnology Pvt. Ltd. & ors.

Office Notes, Office Memorandum of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. Sachin Gite for the Applicant.

Mr. Shashank More holding for Komal Kandharkar for Respondent Nos. 1 to 6.

Mr. A.R.Kapadnis, APP for the Respondent-State.

CORAM : A.S.GADKARI, J.

DATE : 23rd April, 2018

P.C.

1. This is an application under section 378(4) of the Cr.P.C. for leave to file appeal against the Judgment and Order dated 26.5.2016 passed by the learned Judicial Magistrate First Class, Court No.5, Nashik in Summary Criminal Case No. 2965/2014 thereby acquitting the respondents for the offence punishable under Section 138 of the Negotiable Instruments Act.

2. Heard Mr. Sachin Gite for the applicant and Mr. More for respondent Nos. 1 to 6. Perused the record.

3. It is the case of the applicant that Respondent No.1 company gave him a contract for installation of colling unit and

air conditioning unit for a total amount of Rs.17,48,203/- for which the respondent No.1 made part payment. That, towards the balance of part payment, the respondent No.1 issued the cheques in question i.e. cheque bearing No.99685 and 23498 for an amount of Rs.4,87,500/- and Rs.1,00,000/- respectively dated 28.4.2014. The said cheques have been dishonoured on presentation.

4. The evidence on record indicates that the applicant did not complete the contract and therefore, the respondent No.1 company was constrained to get it completed from M/s. Garva Company. As the applicant did not complete its part of obligation, the respondent No.1 company issued a letter to the applicant intimating it not to deposit the said cheques. However, the applicant deposited the said cheques which have been dishonoured. There is no evidence on record to indicate that, the applicant in fact has completed his part of contract and therefore, respondents issued a cheque of Rs.4,87,500/-. It is the defence of the respondents that cheque of Rs.1,00,000/- was kept with the applicant as 'security deposit' which has been misused by it. The respondents have brought on record sufficient material to indicate that they in fact get the balance work completed from M/s. Garva Company and therefore,

they did not pay the balance amount to the applicant by giving instructions to the concerned bank of “Stop payment”. The record indicates that the respondents are successful in rebutting the presumption under Section 139 of the Negotiable Instruments Act.

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 is made out.

6. Application is accordingly dismissed.

(A.S.GADKARI, J.)