

Sarnobat

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

**CRIMINAL APPLICATION NO. 292 OF 2015
WITH
CRIMINAL APPLICATION NO. 293 OF 2015**

Vasantrao Dattatraya Jadhav through
Power of Attorney holder Rajaram
Dattatraya.

.. Appellant.

Vs.

Nilkanth Chintaman Joshi & Ors.

.. Respondents

Mr. Satish Borulkar a/w Mr. Nilabh Toshniwal i/b Mr. Manoj A. Patil for
the Applicant in both the matters.

Mr. Anant S. Patil for the Respondent Nos. 1 and 2 in both the matters.

Mrs. M. R. Tidke APP for the State.

CORAM : PRAKASH D. NAIK, J.

DATE : 22nd JANUARY, 2018.

P. C. :

1. This application is for seeking leave to file an appeal against judgment and order dated 30th March, 2015 passed by learned Judicial Magistrate, First Class, Kolhapur.

2. The applicant is the original complainant. The complaint was filed for an offence under section 138 of Negotiable Instruments Act. After recording the evidence of both the parties, the respondents were acquitted.

3. The learned advocate for the applicant/complainant submitted that the Trial Court had committed an error in acquitting the accused. The accused have failed to rebut presumption under Section

139 of N.I. Act. It is submitted that the Trial Court has observed that, though the accused have failed to prove their defence directly, they have certainly succeeded in creating doubt about the claim of the complainant. The reasoning of Trial Court is erroneous. It is submitted that, considering the nature of evidence leave may be granted to file an appeal against the order of acquittal.

4. The learned counsel for the respondents opposed the grant of leave. The learned counsel pointed out the cross examination of the complainant and submitted that the complainant has failed to prove that the cheque was issued in discharge of any liability. It is submitted that the defence had examined 11 witnesses and has been able to establish that the cheque was issued by way of security.

5. Considering the nature of the case, evidence led by the parties and submissions advanced by both parties, arguable questions are raised for grant of leave. Hence, I pass the following order;

- (i) Leave to file appeal against the judgment and order dated 30th March, 2015 passed by Ld. JMFC, Kolhapur is granted.
- (ii) Appeal is admitted.
- (iii) Call for record and proceedings.

[P. D. NAIK , J.]