

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

CRIMINAL APPLICATION NO.375 OF 2013

Shri. Pawankumar Gulabrao Gore

... **Applicant**

V/s.

Shri. Viky Shivaji Mane & Anr.

... **Respondents**

Mr. Vilas Tapkir for the Applicant.

Mr. V.R, Kasle i/by Ms Meena Sharma for Respondent No.1.

Ms V.S. Mhaispurkar, APP for the Respondent State.

CORAM : A.S.GADKARI, J.

DATE : 22nd MARCH 2018

PC.:

1. This is an application under Section 378(4) of Cr.P.C. for leave to file appeal against the Judgment and Order dated 04.05.2013 passed in Criminal Case No.7641 of 2008, by the learned Judicial Magistrate First Class, Pune, thereby acquitting the respondents for the offence punishable under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as the "N.I.Act").

2. Heard Mr. Tapkir, learned counsel for the applicant and Mr. Kasle learned counsel appearing for Respondent No.1. Perused the record.

3. The evidence on record clearly reveals that, the applicant has failed to prove the basic fact that, the cheque in question was issued by the Respondent No.1 towards his lawful liability or debt. That, the applicant

and Respondent No.1 were partners in Real Seal Firm and the applicant had invested certain amount in the said firm. It is alleged by the applicant that, due to disputes *inter se* between the partners of the firm, they decided to desolve the said firm and towards the share of the applicant, the Respondent No.1 had issued the cheque in question in favour of the applicant, which was dishonored on presentation.

4. It appears from the record that, there are various transactions *inter se* between the parties and the applicant has failed to prove the relevant fact that, towards which transaction, the said cheque in question was issued by Respondent No.1. The Respondent No.1 has taken a specific defence that, the cheque in question was stolen by the applicant by taking disadvantage of the relations between the parties, which has been accepted by the Trial Court.

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.

6. No case is made out for grant of leave.

7. Application is accordingly rejected.

(A.S.GADKARI, J.)