

*Nalawade*FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 320 OF 2014

Balvirsingh M. Panjabi vs. Sitaram M. Nikam and anr.

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. D.S.Joshi for the Applicant.

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

CORAM : A.S.GADKARI, J.

DATE : 26th April, 2018

P.C.

1. This is an application under Section 378(4) of the Cr.P.C. seeking leave to file appeal against the Judgment and Order dated 6.5.2014 passed by the Judicial Magistrate First Class, Nashik in Summary Criminal Case No. 910 of 1998 thereby acquitting respondent No.1 for the offence punishable under Section 138 of the Negotiable Instruments Act.

2. Heard Mr. Joshi, the learned counsel for the applicant and the learned APP. for the State.

3. It is the case of the applicant that, he advanced hand loan of Rs.2,50,000/- to respondent No.1 and the

respondent No.1 executed promissory note dated 22.7.1997 (Exh.43) in that behalf. The respondent thereafter issued the cheque in question which was dishonoured on presentation.

4. The evidence on record clearly reveals that the said promissory note (Usanwar patra) was sent for handwriting expert's opinion and the concerned expert has given a specific opinion that, the disputed signature is not made by the person who made comparative signatures i.e. by respondent No.1. It therefore creates doubt in the mind of this Court about the genuineness of the said promissory note and signature of respondent No.1 on the said promissory note. Once the said document is kept aside from consideration, the evidence on record is absolutely silent about the fact that, the applicant had in fact advanced any hand loan to respondent No.1 and towards its repayment the respondent No.1 has issued the cheque in question to the applicant. The evidence further indicates that respondent No.1 is successful in rebutting the presumption under Section 139 of the Negotiable

Instruments Act.

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.

No case for grant of leave is made out.

6. Application is accordingly rejected.

(A.S.GADKARI, J.)