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

CRIMINAL APPLICATION NO. 455 OF 2017

Mr. Mukesh M. Shah

..Applicant

Vs

Ms. Richa Jitesh Shah &Anr.

..Respondents

Ms. Jayamala Ostwal a/w Anagh Pradhan i/b M/s J. J. Associates for applicant.

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

CORAM : A.S.GADKARI, J.

DATE : 2nd MAY 2018.

P.C.:

1] This is an application under Section 378 (4) of Cr. P.C. seeking leave to file an appeal against the Judgment and Order dated 28th February 2014 passed by the Metropolitan Magistrate, 3rd Morning Court, Borivali, Mumbai in C.C. No.4300632/SS/2010, thereby acquitting the respondent No.1 for the offence punishable under Section 138 of the Negotiable Instruments Act.

2] Heard the learned Counsel for the applicant. Perused the record.

3] The evidence on record indicates that, the applicant has clearly failed to establish the basic fact that he had in fact advanced hand-loan of Rs.3.00 lakhs to the respondent No.1 by producing cogent evidence such as Promissory Note, Income Tax Return, bank transfer receipt or agreement, thereby even remotely it can be inferred that the applicant had in fact advanced a hand loan to the respondent No.1. The evidence on record further indicates that the defence of the respondent No.1 is that the applicant had advanced a hand-loan to her father and for security of the said loan certain cheques were taken from her which have been dishonoured on presentation. The respondent No.1 is successful in rebutting the presumption under Section 139 of Negotiable Instruments Act.

4] After perusing the entire record, this Court is of the 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.

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

Application is accordingly rejected.

(A.S.GADKARI, J.)