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

CRIMINAL APPLICATION NO. 428 OF 2015

Dr. Mohd. Mustufa Haji Md. Momin Hindustanwala **..Applicant**

Vs

Shah Mohammed Mohd. Saeed & Anr **..Respondents**

Mr. G.K. Jadhav, for applicant.

Ms. Aisha Ansari for respondent No.1.

Mr. A.R. Kapadnis, APP for State.

CORAM : A.S.GADKARI, J.

DATE : 5th MARCH 2018.

P.C.:

1] This is an application under Section 378 (4) of the Cr. P.C. seeking leave to file an appeal against the Judgment and Order dated 10th September 2013 passed by the Judicial Magistrate First Class, Court No.5, Malegaon in Summary Criminal Case No.3634 of 2015.

2] Heard the learned Counsel for the respective parties. Perused the record.

The applicant is the original complainant in S.C.C. No.3634 of 2015 filed under Section 138 of the Negotiable Instruments Act. The Trial Court acquitted the respondent No.1 predominantly on two grounds

namely, the applicant has failed to prove the fact that the cheque issued by the respondent No.1 was towards the lawful liability or debt and that the respondent No.1 has successfully rebutted the presumption of issuance of cheque under Section 139 of the Negotiable Instruments Act.

3] The record clearly indicates that, there are two different agreements dated 8.5.2005 and 7.8.2005 entered into between the applicant and the respondent No.1 for hand loan and for giving loom machines on rent to the respondent No.1. The respondent No.1 successfully proved the fact that the cheque in question was issued towards the rent of loom machines which were given by the applicant to him and not towards the alleged hand-loan given by the applicant to the respondent No.1.

4] After perusing the record, this Court is of the opinion that, the view adopted by the Trial Court is a probable view in the facts and circumstances of the present case. No case is made out for grant of leave to appeal.

5] Application is accordingly rejected.

(A.S.GADKARI, J.)