

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO. 320 OF 2016**

Yash Laxmi International Private LimitedApplicant.

Vs.

State of Maharashtra & Anr.Respondents.

Mr. Sathyanarayanan for the Applicant.

Mr. A.R. Kapadnis, APP for the Respondent-State.

CORAM : A. S. GADKARI, J.

DATE : 16th APRIL, 2018.

P.C.:-

This is an Application under Section 378 (4) of Cr. PC. for leave to file Appeal against the Judgment and Order dated 8th July 2016, passed by the learned Metropolitan Magistrate, 53rd Court, Andheri, Bombay in C.C. No. 3410 of 2010, thereby acquitting the Respondent No.2 from the offence punishable under Section 138 of Negotiable Instruments Act, 1881.

2 Heard Mr. Sathyanarayanan, the learned counsel for the Applicant and perused the record.

3 The Applicant is the original Complainant.

It is the case of the Applicant that, it supplied imitation jewellery amounting to Rs.30,00,000/- (Thirty Lacs only) to M/s.

Colours, a partnership firm having its partners namely Mr. Vishnu Chaturvedi and Mr. Mukesh Joshi. That, the Respondent No.2 is the wife of Mr. Mukesh Joshi. It is the further case of the Applicant that in furtherance of an undertaking dated 24th September 2009, executed by the partners of the said M/s. Colours, the cheques in question were handed over to the Applicant by Mr. Mukesh Joshi. The said four cheques are drawn by the Respondent No.2, which were dishonoured on presentation.

4 The evidence on record indicates that the Respondent No.2 is neither a partner of the said firm namely M/s. Colours, nor has any legally enforceable debt or liability against her. It is the categorical defence of the Respondent No.2 that, the said cheques in question were obtained forcibly by the Applicant from Mr. Mukesh Joshi towards the settlement while executing the said undertaking dated 24th September 2009. As the Respondent No.2 is the wife of the said Mr. Mukesh Joshi, her cheques were given to the Applicant towards security, which have been misused by the Applicant. I find substance in the defence of the Respondent No.2.

5 As noted earlier, there is no evidence on record to even remotely indicate and infer the fact that, the Respondent No.2 is

legally liable to pay any amount to the Applicant towards the said transaction of sale of imitation jewelry by the Applicant and purchased by the said M/s. Colours. The evidence on record further reveals that the Respondent No.2 is successful in rebutting the presumption as contemplated under Section 139 of the Negotiable Instruments Act.

6 After perusing the 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 to file Appeal is made out.

7 Application is accordingly rejected.

(A.S. GADKARI, J.)