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

CRIMINAL APPLICATION NO. 325 OF 2016

Mr. Umesh Sabhapati Shukla

..Applicant

Vs

Mr. Pratap Mukund Tumkar & Anr.

..Respondents

Mr. Umar Kazi for applicant.

Mr. Amey Deshpande i/b J.D. Khairnar for respondent No.1.

Mr. A.R. Kapadnis, 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 1st August 2016 passed in S.C.C. No.1812 of 2011 by the Judicial Magistrate First Class, 5th Court, Kalyan, thereby acquitting the respondent No.1 from the offence punishable under Section 138 of the Negotiable Instruments Act.

2] Heard the learned Counsel for the applicant and the learned Counsel for the respondent No.1. Perused the record.

3] It is the case of the applicant that, he was having acquaintance

and friendly relations with the respondent No.1. That at the request of respondent No.1, he advanced a hand loan of Rs.5,25,000/- to him. Out of the said amount of Rs.5,25,000/-, a sum of Rs.4,90,000/- was advanced by way of cheque and an amount of Rs.35,000/- was advanced by way of cash. That the cheque in question was issued by respondent No.1 was towards the repayment of the said amount.

The evidence on record clearly indicates that, the applicant has failed prove the basic fact that he had in fact advanced a loan to the respondent No.1 by producing sufficient and cogent evidence. Though the applicant had contended that, he had advanced a loan of Rs.4,90,000/- by way of cheque to the respondent No.1, he has not produced any documentary evidence to that effect to substantiate his claim. The applicant has also failed to produce any evidence on record, thereby even remotely it can be inferred that the applicant had in fact advanced a loan of Rs.30,000/- by way of cash to the respondent No.1. There is no documentary evidence at all to accept the contention of the applicant. It further appears from the record that, the respondent No.1 is successful in rebutting the presumption under Section 139 of the Negotiable Instruments Act.

4] 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.

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

(A.S.GADKARI, J.)