

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO. 427 OF 2017**

Virendra Kumar Ruhela

....Applicant.

Vs.

The State of Maharashtra & Anr.

....Respondents.

Mr. Rakesh Tiwari for the Applicant.

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

Mr. Dattatray Adarkar i/by Juris Consultants Combine for Respondent No.2.

CORAM : A. S. GADKARI, J.**DATE : 3rd APRIL, 2018.****P.C.:-**

This is an Application under Section 378 (4) of Cr. P.C. for leave to file Appeal against the Judgment and Order dated 12th October 2017, passed by the learned Metropolitan Magistrate, 43rd Court, Borivali, Mumbai, in CC NO. 225/SS/2011 thereby acquitting the Respondent No.2 from the offence punishable under Section 138 of the Negotiable Instruments Act.

2 Heard the learned counsel for the Applicant and the Respondent Nos. 2. Perused the record.

3 It is the case of the Applicant that, he advanced hand-loan to the Respondent No.2, who is his real brother, in the time of his dire

need and towards the repayment of the hand-loan, the Respondent No.2 had issued the said cheques in question to him, which were dishonoured on presentation.

4 The evidence on record reveals that, the Applicant has failed to prove the basic fact that, he in fact, had advanced hand-loan to the Respondent No.2 by adducing sufficient and cogent evidence. No document is produced on record, even to remotely infer that, the Applicant in fact had advanced the amount to the Respondent. The witness namely Mr. Gopal Ruhela, examined by the Applicant, appears to be a tutored witness of the Applicant and has narrated the facts to suit the Applicant. The said witness has reiterated the facts mentioned in the complaint by the Applicant. The said witness appears to be unreliable and his evidence cannot be construed as a gospel truth.

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. It is categorically averred by the Respondent No.2 that, he and the Applicant are the real brothers and had purchased an immovable property and with a view to grab the said property, the Applicant by

taking undue advantage of the relations *inter-se* have misused the cheques given to him towards security. I find substance in the defence taken by the Respondent No.2.

5 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.

6 Application is accordingly rejected.

(A.S. GADKARI, J.)