IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION 679 OF 2017
(Shree Credit Service, Digdoh MIDC Nagpur...vs...Shri Lalit s/o. Pannalal Chatre)

Office Notes, Office Memoramda of Coram, appearances, Court's orders of directions and Registrar's Orders.	*Court's or Judge's orders.*

Shri S.D. Malke, counsel for applicant.

CORAM: ROHIT B. DEO, J.
DATE: 12th MARCH, 2018.

The applicant is seeking leave to challenge the judgment and order dated 21.3.2016 in Summary Criminal Case 28146 of 2012 rendered by Judicial Magistrate First Class (Court-25), Nagpur, by and under which the non-applicant – accused is acquitted of offence punishable under section 138 of the Negotiable Instruments Act, 18881 ("Act" for short).

2 Heard Shri.S.D. Malke, learned counsel for the applicant.

3 The genesis of the prosecution is in the complaint instituted by the applicant under the provisions of the Act,

the gist of which complaint is that the accused obtained loan of Rs. 15,000/- on two occasions and executed two agreements alongwith two sureties. The accused defaulted in payment of the loan. The accused issued cheque bearing number 004038 for Rs.25,637/- towards payment of loan amount, the said cheque was dishonoured, the statutory notice was not complied with and the complainant therefore instituted the complaint.

4 The learned Magistrate has recorded a finding that the complainant did not prove that the accused issued the cheque towards discharge of legally enforcible debt or liability.

5 The applicant claims to be the owner of “Shri Credit Services”. The learned Magistrate has noted the admission of the complainant that the registration number mentioned in the complaint is not the registration number of his business concern. The complainant claims that Shri Credit Services is a micro finance company. However, the admission in the cross examination is that the said business

is registered only with District Industries Center (DIC).

6 Concededly, according to the complainant the amount was lent to the accused and the repayment was to be made alongwith interest at the rate of Rs. 18% per annum. Apart from the fact, that it is extremely doubtful whether the business of micro finance is legal and the liability, if any, is legally enforceable, it is admitted by the complainant in the cross-examination that all the three cheques were blank. The three cheques were signed and bore the stamp of the accused but then the rest of the contents were blank. The further admission of the complainant is that he used blank security cheques given for repayment of loan from the accused. The finding recorded by the learned Magistrate inter-alia in paragraph 20 of the judgment and order impugned is that it is difficult to come to any conclusion, with any degree of certainty, whether there was any existing debt or liability when the cheques were filled in and presented for encashment. The view taken by the learned Magistrate is a possible view and is certainly not perverse. No compelling case is made out for

grant of leave under section 378(4) of the Code of Criminal Procedure.

7 The application is sans merit and is rejected.

JUDGE

rsb