

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 333 OF 2016**

Yogesh Kantilal Jain. ..Applicant.

V/s.

The State of Maharashtra & anr. ..Respondents.

Mr. Rakesh Bhatkar, advocate for applicant.

Ms. P.N. Dabholkar, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : JANUARY 14, 2019.

P. C. :

1 Heard the learned Counsel for the applicant and the learned APP for State.

2 The applicant herein is seeking leave to appeal challenging the Judgment and Order dated 27/7/2016 passed by the Judicial Magistrate First Class, Dapoli in S.C.C. No. 307 of 2015. Perused the evidence of the complainant.

3 On 14/1/2016 the complainant had entered the witness box and had deposed before the Court that he had not furnished on record any document to show that the legality of recoverable debt in as much as, the invoices were not placed on record. However, it was submitted

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before the learned Magistrate that he is in possession of the invoices. On 29/1/2016 the complainant had filed an application seeking liberty to file the additional document such as invoices and other documents. The applicant was allowed and the documents were taken on record. However, in his substantive evidence dated 29/1/2016 he has not proved the said document, not mentioned the details, neither the contents of the invoices.

4 In view of the above, the learned Magistrate has held that the complainant has not produced any written account of the accused to show the exact amount due from the accused to him. Similarly, he has also not produced any documentary evidence to prove the alleged supply of mobiles by him to the accused and therefore, according to the learned Judge, the accused had rebutted the presumption under section 139 of the Negotiable instruments Act. It appears from the Judgment that the complainant had also examined C.W. 2 to show that he is having mobile shop at Family Mal, Dapoli, but C.W. 2 has not placed any documentary evidence to that effect and C.W. 2 has been examined only to demonstrate that the complainant had visited his shop alongwith the accused. The learned Judge has also observed that the receipts produced by C.W. 2 on record were not having any seal and signature of the accused and moreso, they were not signed and sealed by anybody

and therefore, the same were not accepted as duly proved. The learned Judge has rightly held that besides oral evidence, there is nothing on record to indicate that the accused was having liability to pay legally recoverable debt and that the cheque was issued against legally recoverable debt.

5 It is in view of the above observations, the application seeking leave to appeal deserves to be dismissed, as there is no reason to interfere with the findings recorded by the learned Judicial Magistrate First Class, Dapoli.

6 The application stands dismissed.

[SMT. SADHANA S. JADHAV, J.]