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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO. 46 OF 2018**

M/s. Vasundhara Associates

.....Applicant

V/s.

M/s. Hydrocanes Systems Pvt. Ltd.
and others

.....Respondents

Mr. Mandar Soman for the applicant
Mr. Devendra S. Joshi for respondent no. 1
Mr. R. M. Pethe APP for the State**CORAM : NTIN W. SAMBRE, J.****DATE : DECEMBER 4, 2019.****P.C.**

Heard.

2 Respondent-accused in Summary Criminal Case No. 346 of 2016 came to be acquitted vide Judgment and Order dated 23/12/2017 for an offence punishable under Section 138 of the Negotiable Instruments Act.

3 The submissions are, Exhibit 31, an E-mail forwarded by applicant ought not to have been read down to the detriment of the applicant-complainant particularly when the accused admitted in his statement recorded under Section 313 of Code of Criminal Procedure, 1973 about issuance of cheque. A further submission is, an E-mail, unless supported by a certificate under Section 65-B of the Evidence Act, should not have been relied on for ordering acquittal of the accused.

4 The fact remains that in the evidence, complainant has accepted the fact that against disputed cheques, part payment was received and reflected in the accounts. Apart from above, issuance of E-mail Exhibit 31 is not disputed by the complainant-applicant who rather in his cross-examination has admitted the issuance of the same. In view of admission given by the complainant, requirement of a certificate under Section 65-B of the Evidence Act in support of E-mail Exhibit 31 would not require. As such, the said contention is also required to be rejected.

5 As far as admission given by accused in statement under Section 313 of Code of Criminal Procedure, 1973 about issuance of cheque is concerned, he has clarified while answering question no. 18 that there was genuine dispute as regards the quality and quantity of the material supplied by the complainant.

6 In the aforesaid background, no case for grant of leave is made out. Application for leave to appeal stands rejected.

[NITIN W. SAMBRE, J.]