

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

APPLICATION FOR LEAVE TO APPEAL (PVT.) NO. 178 OF 2019

M/s. Aditya Corporation
Through its Partner :
Dilip Jamnadas Thakkar

...Appellant

vs.

Abhay Ashok Mangaonkar and Anr.

...Respondents

Mr.Wasim N. Samleware, Advocate for Appellant.
Mr.N.B.Patil – APP for the Respondent No.2-State.

CORAM : S. M. MODAK, J.

DATE : 28th FEBRUARY, 2023

P. C. :-

1. Heard learned Advocate for the Appellant-Complainant. Notice is served on Respondent No.1-Accused. There is no appearance.
2. Perused the judgment. Respondent-Accused was acquitted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 [“NI Act”] mainly for the reason that the Appellant firm is unregistered firm and as such, prosecution is not maintainable.
3. In Para No.19, there is a reliance on a judgment in case of *Sai*

*Accumulated Industries Sangamner V/s. M/s. Sethi Brothers Aurangabad*¹. Whereas, it is submitted that the view expressed therein no more remains to be a correct view. It is in view of the judgment given by the Division Bench of this Court in case of *Narendra s/o Amarnathji Kalda V/s. Balbirsingh s/o Motisingh Chawhan*². Division Bench answered that prosecution is not hit by bar created under Sub-section (2) of Section 69 of the Indian Partnership Act, 1932. This judgment was pronounced after the impugned judgment came to be passed. The observations of the Division Bench will have to be considered. In view of that, case for grant of leave is made out.

4. Special Leave to prefer an Appeal is granted. Admit the Appeal. Call record and proceeding. Issue notice to Respondent No.1 returnable on **6th April, 2023**. Learned APP waives notice for Respondent No.2-State. An action under Section 390 of the Code of Criminal Procedure, 1973 ["Cr.P.C."] be initiated.

[S. M. MODAK, J.]

1 ABC 2016 (I) 469 BOM

2 (2020) AIR Bom R (Cri) 112