

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

APPLICATION FOR LEAVE TO APPEAL (PVT.) NO. 333 OF 2019

M/s. Prince Marine Transport Services
Private Limited

...Applicant

vs.

State of Maharashtra and Anr.

...Respondents

Mr. Shyam M. Kalyankar – Advocate for Applicant.
Mr. A. R. Kapadnis – APP for the Respondent No. 1-State.
None for Respondent No. 2.

CORAM : S. M. MODAK, J.

DATE : 27th MARCH, 2023

P. C. :-

1. Heard learned Advocate for the Appellant – Complainant.
2. Even though the Respondent No. 2 – Accused is served and there is appearance, today no one is present on his behalf. My attention is invited to the order dated 16th October, 2019. This Court has made it very clear that considering the narrow controversy, the Court will decide the matter finally at the stage of admission itself.
3. Learned Advocate invited my attention to the judgment which

is passed by the Court of Metropolitan Magistrate, 16th Court, Ballard Pier, Mumbai on 9th August, 2019. The Respondent-Accused was acquitted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 [“NI Act”]. All other points were answered in favour of the Appellant except one point relating to filing of authorization. The Appellant is a private limited company and its chairman has given evidence. In Para No.2 of the affidavit of evidence, it is clarified on which documents, he wants to rely upon in order to support authorization given to him by the company. However, these documents are not referred in the impugned judgment. Instead of that, the trial Court observed “But complainant failed to prove the basic necessary aspect of the case that, he is authorized person of complainant to conduct the present proceeding on its behalf.”

4. It is further observed that minute book was not produced. While making these observations, the documents mentioned in Para No.2 of the affidavit are not considered. Hence, case is made out.

5. Special Leave is granted.

6. Appeal is admitted.

7. Call record and proceeding.

8. An action be initiated under Section 390 of the Code of Criminal Procedure, 1973 ["Cr.P.C."] and the trial Magistrate is directed to seek surety of Rs.15,000/- from him as the Respondent No.2 is a resident of outside Maharashtra.

9. Let the Appellant also to serve copy of this order on Respondent No.2 as well as his Counsel privately and to file an affidavit.

10. Even though the Appeal is admitted, it is made clear that it will be taken for final hearing. In fact today itself the Appeal could have been disposed of but in order to give one opportunity to the Respondent, this direction is issued.

11. Application for Leave to Appeal is disposed of.

12. Matter be kept on **12th April, 2023.**

[S. M. MODAK, J.]