

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

APPLICATION FOR LEAVE TO APPEAL (PVT.) NO. 514 OF 2018

P. Suryakant Share and Stock
Brokers Pvt. Ltd.

...Applicant

vs.

Laxmichand Lalji Chheda and Ors.

...Respondents

Mr.Nikhil Wadikar a/w Mr.Niranjan Kandade i/b. Mr.Ganesh Dhonde
– Advocates for Applicant.
Mr.Y.Y.Dabke – APP for the Respondent No.3-State.

CORAM : S. M. MODAK, J.

DATE : 27th MARCH, 2023

P. C. :-

1. Heard learned Advocate for the Applicant – Complainant.
2. Though notices on Respondent Nos. 1 and 2 are duly served, they have not appeared. The Court of Metropolitan Magistrate, 33rd Court, Ballard Pier – Mumbai as per the judgment dated 3rd September, 2018 was pleased to acquit the Respondents for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 [“NI Act”]. The following reasons were given :-

- (i) The Complainant's representative Shri.Morparia has consciously deleted the words "I am conversant with the facts of the case on the basis of records" from the affidavit of evidence.
- (ii) The shares were not transfer in the purchaser's account.
- (iii) The wordings of mandatory notice are defective, so to say, "there was no specific demand for payment of money".

3. According to the learned Advocate for the Applicant, either these findings are contrary to the evidence or made by taking hyper technical view. It is submitted that the Respondent No.1 – Laxmichand was having dealing with the Appellant about the shares and the Appellant was acting as a sub-broker in Bombay Stock Exchange. He used to purchase shares on behalf of the Respondent No.1 and there was a ledger maintained by him. Its copy is filed on record. It is also submitted that in fact, Respondent No.2 issued cheques on behalf of Respondent No.1 and the bank account was jointly operated and it is mentioned in the affidavit and it is not denied. My attention is invited to Page No.70. In the entry at Sr.No.4 from the bottom dated 23rd July, 2013 mentions that in fact the transaction was done on 19th July, 2013 and it is not considered by the trial Court. Accordingly, the corresponding observations are

wrong. Though the trial Court has referred about conscious deletion of the words from the evidence affidavit, it is submitted that there was no such conscious deletion as observed by the trial Court. In fact, my attention is invited to the relevant portions from the affidavit filed by the representative of the Complainant. It is true that instead of saying that let the amount be paid if is not said that remit the amount that will be suffice.

4. Hence, arguable case is made out for admission of the Appeal.
5. Accordingly, Special Leave to Appeal is granted.
6. Appeal is admitted.
7. Call record and proceeding.
8. An action be initiated against the Respondent Nos. 1 and 2 under Section 390 of the Code of Criminal Procedure, 1973 [“Cr.P.C.”].
9. Let learned Metropolitan Magistrate to release them after furnishing bail for appropriate amount.
10. Application for Leave to Appeal is disposed of.
11. Notice be issued returnable on **3rd May, 2023.**

[S. M. MODAK, J.]