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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.2909 OF 2010

Marico Limited .. Applicant.
-versus
M/s Krishna Pet Private Limited an ors .. Respondents.

Mr. Rajeev V Talasikar, for the Applicant.
Ms Riddhi Shah, for the Respondent Nos 1 to 4.

CORAM: R.C. CHAVAN, J.

DATED: 30th June, 2011

P.C.

1. This is an application for leave to file appeal against acquittal of the respondents for the offence punishable under Section 138 of the Negotiable Instruments Act, recorded by the learned Metropolitan Magistrate, 58th Court, Bandra, Mumbai. The applicant is a company who had appointed respondent No.1 company as its distributor. The cheque in question of Rs.2,33,048.77, was allegedly given for the amounts due and payable. The cheque is dated 16th July, 2007.

2. Learned counsel for the applicant states that the learned trial Magistrate should not have relied on unsigned letter allegedly written by the applicant's auditors, to the

respondent on 20.2.2009 i.e. after the complaint was filed, wherein it was stated that there was balance of Rs. 2,01,510.89 recoverable from the respondents. He also submits that the learned Magistrate should have seen that in the letter dated 23rd May, 2007 whereby respondent had discontinued the distributorship of the company. Respondent had not stated that any amount was recoverable from the company. Demand for amount of Rs.13,896/- only arose in response to the letter allegedly written by the auditors.

3. This argument would have been useful had the witness examined on behalf of complainant explained as to how the amount of Rs.2,33,048.77 was arrived at and the cheque in question was issued by the accused on the date when the amounts was due. The cheque which was dishonoured does not bear the name of the applicant company. In fact it bears the stamp of the name of the company which would be more consistent with the defence that the cheque in question was given by way of security and the complainant failed to prove that any amount was recoverable. The complainant's witness it's Legal Manager, stated in cross examination that she is unable to give details of amounts to be paid to complainant. There is no mention as to how the amount mentioned in the cheque was arrived at. She did not know whether the accused had given cheque for the security of transaction. In view of this, the view taken by

the learned Magistrate cannot be said to be improbable or perverse. Leave refused. Appeal dismissed.

(R. C. CHAVAN, J.)