

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL MISC.APPLICATION NO. 18188 of 2018**

=====

TRIVEDI HARGOVANBHAI BHAYSHANKAR

Versus

STATE OF GUJARAT

=====

Appearance:

MR. HARDIK P BAROT(6798) for the PETITIONER(s) No. 1

for the RESPONDENT(s) No. 2

MR HARDIK SONI, ADDL. PUBLIC PROSECUTOR(2) for the  
RESPONDENT(s) No. 1

=====

CORAM: HONOURABLE MS JUSTICE SONIA GOKANI

Date : 28/09/2018

**ORAL ORDER**

1. **RULE.** Mr.Hardik Soni, learned Additional Public Prosecutor waives service of notice of Rule for and on behalf of the respondent-State. The Rule is returnable forthwith.

2. Aggrieved by the judgment and order of acquittal rendered on 29.06.2018, by the learned Judicial Magistrate First Class, Vijapur, District Mehsana, while dealing with Criminal Case No.454 of 2013, arising out of the offence punishable under section 138 of the Negotiable Instruments Act, 1881 ('the

N.I.Act' hereinafter) the present application for Special Leave to Appeal under Section 378 (4) of the Code of Criminal Procedure has been preferred by the applicant-original complainant, whereby the Trial Court gave benefit of doubt to the opponent under Section 138 of the N.I.Act.

3. This Court has heard learned advocate, Mr.Vivek Brahmhatt for learned advocate, Mr.Hardik Barot, who has taken this Court through the documentary evidence and the decision of the Trial Court, which is impugned in this matter. He has further pointed out as to how there are serious errors committed by the concerned Court which would warrant grant of Special Leave to Appeal and proceeding with the Trial. He has also further urged that the Trial Court has disregarded the legal presumption available in favour of the applicant-complainant being the holder in due course of the Negotiable

Instrument.

4.This Court has heard Mr.Hardik soni, learned Additional Public Prosecutor for respondent-State, who has supported the case of the applicant.

5.Having found sufficiency of the reasons on the strength of the written documents and the oral submissions made by the learned advocate for the applicant, this Court is of the opinion that Special Leave to prefer an Appeal deserves to be granted.

6.Hence, the present application is allowed and stands disposed of. The applicant is granted Special Leave to Appeal. Rule is made absolute accordingly.

**(MS SONIA GOKANI, J)**

M.M.MIRZA